

# **Exhibit 1**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES LITIGATION,

No. 2:08-md-1919 MJP  
Lead Case No. C08-387 MJP

This Document Relates to: ALL ACTIONS

**STIPULATION AND AGREEMENT OF SETTLEMENT  
WITH INDIVIDUAL OFFICER AND DIRECTOR DEFENDANTS  
AND WITH WASHINGTON MUTUAL, INC.**

This Stipulation and Agreement of Settlement (the “Stipulation”) is entered into by and among: (i) Ontario Teachers’ Pension Plan Board (“Ontario Teachers”), Lead Plaintiff in the consolidated class action styled *In re Washington Mutual, Inc. Securities Litigation*, No. 2:08-md-1919 MJP (W.D. Wash.), Lead Case No. C08-387 MJP (the “Action”<sup>1</sup>), one of the actions that comprises the Multidistrict Litigation captioned *In re Washington Mutual, Inc. Securities, Derivative & ERISA Litigation*, Case No. 2:08-md-1919 MJP (W.D. Wash), on behalf of itself and the Class;<sup>2</sup> (ii) Defendants Kerry K. Killinger, Thomas W. Casey, Stephen J. Rotella, Ronald J. Cathcart, David C. Schneider, John F. Woods, Melissa J. Ballenger (collectively, the “Officer Defendants”), Anne V.

<sup>1</sup> The term “Action” expressly excludes *Flaherty & Crumrine Preferred Income Fund Inc. v. Killinger et al.*, 09-1756 (W.D. Wash.) and *In re Washington Mutual, Inc. California Securities Litigation*, 09-664 (W.D. Wash.).

<sup>2</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 herein, unless a contrary indication appears.

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Farrell, Stephen E. Frank, Thomas C. Leppert, Charles M. Lillis, Phillip D. Matthews, Regina Montoya, Michael K. Murphy, Margaret Osmer McQuade, Mary E. Pugh, William G. Reed, Jr., Orin C. Smith, James H. Stever and Willis B. Wood, Jr. (collectively, the “Outside Director Defendants” and, together with the Officer Defendants, the “Individual Defendants”); and (iii) Defendant Washington Mutual, Inc. (“WMI” or the “Company” and, together with the Individual Defendants the “Settling Defendants”) by and through their respective counsel, is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure, and is subject to (a) the approval of the United States District Court for the Western District of Washington (the “District Court”), and (b) entry of the Bankruptcy Court Approval Order by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). Subject to the terms expressly provided herein, this Settlement is intended to settle and release all Settled Claims, including without limitation, the Bankruptcy Claims.

WHEREAS:

A. Beginning in November 2007, three securities class actions, *Koesterer v. Washington Mutual, Inc., et al.*, No. C08-0387 MJP; *Abrams and Roffe v. Washington Mutual, Inc., et al.*, No. C-08-388 MJP; and *Garber v. Washington Mutual, Inc., et al.*, No. C08-465 MJP were commenced in the United States District Court for the Southern District of New York (the “Southern District of New York”) against WMI and certain of its officers and directors who are also named as Individual Defendants (collectively, the “Securities Actions”). The Securities Actions alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder, with respect to public disclosures concerning the lending practices

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1 and financial condition of WMI. A fourth putative securities class action, *Nelson v. Woods, et al.*,  
 2 No. C 07-1809 MJP, was commenced in the District Court and was voluntarily dismissed, without  
 3 prejudice, on March 3, 2008.

4 B. On February 21, 2008 and March 17, 2008, the United States Judicial Panel on  
 5 Multidistrict Litigation ordered that the Securities Actions, together with a number of related  
 6 derivative and ERISA actions, be centralized for coordinated pretrial proceedings in the District  
 7 Court and that the Securities Actions pending in the Southern District of New York be transferred to  
 8 the District Court.

9 C. On May 7, 2008, the District Court entered an Order consolidating the Securities  
 10 Actions and any related pending or subsequently filed actions into the Action; appointing Ontario  
 11 Teachers as Lead Plaintiff, Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel and  
 12 Byrnes Keller Cromwell LLP as Liaison Counsel in the Action; and ordering Lead Plaintiff to file an  
 13 amended complaint.

14 D. On May 13, 2008, Brockton Contributory Retirement System ("Brockton") filed a  
 15 class action complaint, *Brockton Contributory Retirement System v. Washington Mutual, Inc., et al.*,  
 16 No. C08-751 MJP, alleging claims under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933  
 17 (the "Securities Act") against certain of the Underwriter Defendants, certain of the Officer  
 18 Defendants and Outside Director Defendants and Deloitte & Touche LLP ("Deloitte") in connection  
 19 with (i) the August 2006 offering (the "August 2006 Offering") of \$500 million of floating rate notes  
 20 due August 24, 2009 (the "Floating Rate Notes") and \$400 million of 5.50% notes due August 24,  
 21 2011 (the "5.50% Notes"); (ii) the September 2006 offering (the "September 2006 Offering") of

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1 \$500 million in Series K perpetual non-cumulative floating rate preferred stock (“Series K Stock”);  
2 and (iii) the October 2007 offering (the “October 2007 Offering”) of \$500 million of 7.250%  
3 subordinated notes due November 1, 2017 (the “7.250% Notes”). Such action was subsequently  
4 consolidated into the Action.

5 E. On August 5, 2008, Lead Plaintiff filed the Consolidated Class Action Complaint  
6 (the “Consolidated Complaint”), which included Brockton as an additional named plaintiff. The  
7 Consolidated Complaint asserted claims against WMI, Killinger, Casey, Cathcart, Rotella, and  
8 Schneider under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; and  
9 against Killinger, Casey, Cathcart, Rotella, Schneider, Woods, Ballenger, and certain of the Outside  
10 Director Defendants under Section 20(a) of the Exchange Act. The Consolidated Complaint alleged  
11 that the named defendants in the Exchange Act claims made, or controlled others who made,  
12 materially false and misleading statements about the effectiveness of WMI’s risk management  
13 procedures, the fairness and reliability of the appraisals received in connection with WMI’s loans,  
14 the quality of WMI’s mortgage underwriting practices and WMI’s financial results, including the  
15 appropriate allowances for its loan losses, and that these false and misleading statements caused the  
16 prices of WMI’s securities to be artificially inflated during the Class Period. The Consolidated  
17 Complaint also asserted claims against WMI, Killinger, Casey, Woods, the Outside Director  
18 Defendants, Deloitte, the Underwriter Defendants, Lehman Brothers Inc. (“Lehman”) and Banc of  
19 America Securities LLC (“BOA”) under Section 11 of the Securities Act; against WMI, the  
20 Underwriter Defendants, Lehman and BOA under Section 12(a)(2) of the Securities Act; and against  
21 Killinger, Casey, Woods, Ballenger, and the Outside Director Defendants under Section 15 of the  
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1 Securities Act. The Consolidated Complaint alleged that the named defendants in the Securities Act  
 2 claims were statutorily liable for materially untrue statements and misleading omissions in the  
 3 registration statement and offering documents for four public offerings WMI conducted during the  
 4 Class Period, including the August 2006 Offering, the September 2006 Offering, the October 2007  
 5 Offering and WMI's December 2007 offering (the "December 2007 Offering") of \$3 billion in  
 6 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock (the "Series R Stock").

7 F. On September 25, 2008, the Office of Thrift Supervision (the "OTS"), by order  
 8 number 2008-36, closed Washington Mutual Bank ("WMB"), appointed the FDIC Receiver as  
 9 receiver for WMB and advised that the FDIC Receiver was immediately taking possession of  
 10 WMB's assets. Upon its appointment as receiver, the FDIC Receiver sold substantially all the assets  
 11 of WMB to JPMorgan Chase Bank, National Association, pursuant to that certain Purchase and  
 12 Assumption Agreement, Whole Bank, dated as of September 25, 2008.

13 G. On September 26, 2008, WMI and WMI Investment Corp. (together, the "Debtors")  
 14 each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the  
 15 "Bankruptcy Code") with the Bankruptcy Court, as jointly administered, *In re Washington Mutual,*  
 16 *Inc.*, Case No. 08-12229 (MFW) (the "Chapter 11 Cases"). As a result, all claims against WMI in  
 17 the Action were stayed pursuant to 11 U.S.C. § 362(a).<sup>3</sup>

18 H. On December 16, 2008, the Bankruptcy Court entered an Order Modifying Automatic  
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20 <sup>3</sup> On September 19, 2008, the Southern District of New York entered an order commencing a  
 21 proceeding under the Securities Investor Protection Act of 1970 (SIPA) with respect to Lehman and  
 22 staying certain proceedings, including the Action, against Lehman pursuant to 11 U.S.C. § 362(a).  
*SIPC v. Lehman Bros. Inc.*, 08 cv 8119 (S.D.N.Y. Sept. 19, 2008 [Dkt. No. 1]).

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Stay to Allow Advancement Under Insurance Policies that, among other things, authorized the Contributing Insurers to advance defense fees and costs incurred by the Officer Defendants and the Outside Director Defendants in the Action.

I. The Bankruptcy Court established March 31, 2009 at 5:00 p.m. (Eastern Time) (the “Bankruptcy Bar Date”) as the deadline for filing proofs of claim against the Debtors and their chapter 11 estates.

J. Prior to the Bankruptcy Bar Date, Plaintiffs filed the following proofs of claim in the Chapter 11 Cases on their own behalf against WMI with respect to the claims asserted in the Action (the “Individual Claims”):

<u>Claim No.</u>	<u>Claimant</u>	<u>Debtor</u>	<u>Amount</u>
2761	Ontario Teachers’ Pension Board	WMI	Unliquidated
2763	Brockton Contributory Retirement System	WMI	Unliquidated

K. Prior to the Bankruptcy Bar Date, Lead Plaintiff also filed the following proof of claim in the Chapter 11 Cases on behalf of the Class with respect to the claims asserted in the Action (the “Class Claim” and, together with the Individual Claims, the “Bankruptcy Claims”):

<u>Claim No.</u>	<u>Claimant</u>	<u>Debtor</u>	<u>Amount</u>
2759	Lead Plaintiff on behalf of the Class in In re Washington Mutual Securities Litigation	WMI	Unliquidated

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1           L.       On March 18, 2010, the Debtors filed the Debtors' Twenty-Eighth Omnibus  
2 (Substantive) Objection to Claims (the "Twenty-Eighth Omnibus Objection") and asserted that (i)  
3 the Class Claim should be disallowed because the Lead Plaintiff failed to seek certification on behalf  
4 of the putative class pursuant to Rule 9014 of the Federal Rules of Bankruptcy Procedure (the  
5 "Bankruptcy Rules"), and (ii) any recovery on account of the Bankruptcy Claims should be  
6 subordinated pursuant to section 510(b) of the Bankruptcy Code. By stipulation, dated May 17,  
7 2010 (the "Claim Stipulation"), the Lead Plaintiff, on its own behalf and on behalf of the Class, as  
8 well as Brockton on its own behalf, and the Debtors, agreed (i) to a consensual resolution of the  
9 Twenty-Eighth Omnibus Objection whereby the Lead Plaintiff and Brockton would stipulate to the  
10 subordination of the Bankruptcy Claims consistent with section 510(b) of the Bankruptcy Code, and  
11 (ii) to the withdrawal, without prejudice, of the Twenty-Eighth Omnibus Objection pursuant to the  
12 terms of the Claim Stipulation. By order, dated May 19, 2010, the Bankruptcy Court approved the  
13 Claim Stipulation and granted the Twenty-Eighth Omnibus Objection, as modified, thereby  
14 subordinating the Bankruptcy Claims, to the extent allowed, consistent with section 510(b) of the  
15 Bankruptcy Code.

16           M.       On December 8, 2008, all of the Defendants, other than WMI and Lehman, filed  
17 motions to dismiss the Consolidated Complaint, which were fully briefed and argued to the District  
18 Court. On May 15, 2009, the District Court entered an order granting in part and denying in part the  
19 motions to dismiss. The District Court denied Defendants' motions to dismiss the claims under the  
20 Securities Act concerning the October 2007 Offering, but granted Defendants' motions to dismiss  
21 the Securities Act claims concerning the August 2006 Offering, the September 2006 Offering and  
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1 the December 2007 Offering. Additionally, the District Court ordered that the Exchange Act claims  
2 be re-pled.

3 N. On June 15, 2009, Lead Plaintiff filed the Amended Consolidated Class Action  
4 Complaint (the "Amended Complaint"). In addition to Lead Plaintiff Ontario Teachers and named  
5 plaintiff Brockton, the Amended Complaint included Pompano Beach Police and Firefighters'  
6 Retirement System ("Pompano Beach"), Harlan Seymour ("Seymour"), and Police and Fire  
7 Retirement System of the City of Detroit ("Detroit P&F") as named plaintiffs. Like the  
8 Consolidated Complaint, the Amended Complaint asserted claims under Sections 10(b) and 20(a) of  
9 the Exchange Act and Rule 10b-5 promulgated thereunder; and under Sections 11, 12(a)(2) and 15  
10 of the Securities Act. The Amended Complaint alleged claims substantially similar to those in the  
11 Consolidated Complaint.

12 O. On July 17, 2009, all Defendants (except WMI and Lehman, against which the Action  
13 had been stayed) filed motions to dismiss the Amended Complaint. The motions were fully briefed  
14 and argued to the District Court. On October 27, 2009, the District Court sustained the Exchange  
15 Act claims against all the Defendants against whom they were asserted and dismissed the Section 11  
16 claims relating to the August 2006 offering of 5.50% Notes and the Section 12(a)(2) claims relating  
17 to the 5.50% Notes, the Floating Rate Notes, and the Series K Stock, but sustained all other  
18 Securities Act claims asserted.

19 P. On January 15, 2010, all Defendants, other than WMI and Lehman, filed answers to  
20 the Amended Complaint.

21 Q. On April 30, 2010, Lead Plaintiff filed a motion for class certification which was  
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1 fully briefed and argued to the District Court.

2 R. On October 12, 2010, the District Court entered an Order (the “October 12, 2010  
3 Order”) granting Lead Plaintiff’s motion for class certification except with respect to named plaintiff  
4 Seymour and the Series K Stock. The District Court certified Lead Plaintiff and additional named  
5 plaintiffs Pompano Beach, Brockton and Detroit P&F (collectively, the “Additional Named  
6 Plaintiffs”) as class representatives and appointed Lead Counsel as Class Counsel. The District  
7 Court excluded named plaintiff Seymour and the Series K Stock from the certified class.<sup>4</sup>

8 S. On December 1, 2010, the Underwriter Defendants moved for judgment on the  
9 pleadings, a motion in which all Defendants (other than WMI and Lehman) joined, contending that  
10 the remaining Securities Act claims relating to the August 2006 Offering and the December 2007  
11 Offering were barred by the statute of limitations. The District Court heard oral argument on the  
12 motion on January 27, 2011 and denied the motion on January 28, 2011.

13 T. Pursuant to the District Court’s Order, dated November 25, 2009, the parties were  
14 directed to engage in mediation to determine whether a consensual resolution of the Action could be  
15 achieved. Lead Plaintiff and the Individual Defendants, through their respective counsel, engaged in  
16 extensive arm’s-length negotiations that included mediation sessions on February 18, 2011 and  
17 March 22 and 23, 2011, with an experienced mediator, former United States District Judge Layn R.  
18 Phillips and extensive additional settlement discussions and negotiations during February and March  
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20 <sup>4</sup> BOA, which was an underwriter for the Series K Stock, was dismissed from the Action pursuant to  
21 the District Court’s October 12, 2010 Order.

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1 2011, including the submission of detailed mediation briefs to Judge Phillips. With Judge Phillips'  
2 assistance, on March 23, 2011, Lead Plaintiff reached an agreement-in-principle to settle with the  
3 Individual Defendants, on terms that include the use of the Directors' and Officers' Liability  
4 Insurance Policies to fund the payment of One Hundred Five Million Dollars (\$105,000,000.00), in  
5 cash, to be paid by the Contributing Insurers for the benefit of the Class.

6 U. Lead Counsel has conducted an investigation and pursued discovery relating to the  
7 claims and the underlying events and transactions alleged in the Amended Complaint. Lead Counsel  
8 has analyzed the evidence adduced during its investigation and through discovery, which included  
9 almost 500 witness interviews, review of over 23 million pages of documents produced by  
10 Defendants and others, and dozens of depositions; has consulted with numerous experts, including  
11 experts in accounting and auditing, risk management, loss reserve modeling, statistical analysis and  
12 damages; and has researched the applicable law with respect to the claims of Lead Plaintiff and the  
13 Class against the Settling Defendants and the potential defenses thereto.

14 V. Based upon its investigation and what it has learned through its prosecution of the  
15 Action, Lead Counsel has concluded that the terms and conditions of the Settlement are fair,  
16 reasonable and adequate to Lead Plaintiff and the other members of the Class, and in their best  
17 interests. Based on Lead Plaintiff's direct oversight of the prosecution of the Action, along with the  
18 input of Lead Counsel, Lead Plaintiff has agreed to settle the Action against the Settling Defendants  
19 and to withdraw, with prejudice, the Bankruptcy Claims in the Chapter 11 Cases, pursuant to the  
20 terms and provisions of this Stipulation, after considering (i) the substantial benefits that Lead  
21 Plaintiff and the other members of the Class will receive from the resolution of the Action against  
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1 the Settling Defendants and the withdrawal, with prejudice, of the Bankruptcy Claims in the Chapter  
2 11 Cases, pursuant to the terms and provisions of this Stipulation; (ii) the attendant risks of  
3 litigation; and (iii) the desirability of permitting the Settlement to be consummated as provided by  
4 the terms of this Stipulation.

5 W. Each of the Settling Defendants denies any wrongdoing, and this Stipulation shall in  
6 no event be construed or deemed to be evidence of or an admission or concession on the part of any  
7 of the Settling Defendants with respect to any claim or of any fault or liability or wrongdoing or  
8 damage whatsoever, or any infirmity in the defenses that the Settling Defendants have asserted, or  
9 could have asserted, in the Action or in the Chapter 11 Cases with respect to the Bankruptcy Claims  
10 or otherwise. The Settling Parties recognize, however, that the Action and the Bankruptcy Claims  
11 have been filed and prosecuted by Lead Plaintiff and defended by the Settling Defendants in good  
12 faith under Rule 11 of the Federal Rules of Civil Procedure, and, where applicable, Rule 9011 of the  
13 Bankruptcy Rules, and that the Action is being voluntarily settled and the Bankruptcy Claims  
14 withdrawn, with prejudice, with the advice of counsel. The Settling Parties recognize that the terms  
15 of the Settlement are fair, adequate and reasonable. The Settling Defendants are entering into this  
16 Settlement solely to avoid the cost and distraction of further litigation.

17 NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff of  
18 any lack of merit of the Action or the Bankruptcy Claims whatsoever, and without any admission or  
19 concession of any liability or wrongdoing or lack of merit in their defenses whatsoever by any of the  
20 Settling Defendants, it is hereby STIPULATED AND AGREED, by and among the parties to this  
21 Stipulation, through their respective attorneys, subject to entry of (a) the Bankruptcy Court Approval  
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Order by the Bankruptcy Court, and (b) the Judgment, by the District Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Settling Parties from the Settlement, that all Settled Claims against the Released Defendant Parties and all Released Claims by Defendants as to Plaintiffs shall be unconditionally, fully, finally and forever compromised, settled, released and dismissed, with prejudice, and the Bankruptcy Claims shall be withdrawn, with prejudice, in their entirety, upon and subject to the following terms and conditions:

### **DEFINITIONS**

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) “Alternative Judgment” means a form of final judgment that may be entered by the District Court but in a form other than the form of Judgment provided for in this Stipulation.

(b) “Authorized Claimant” means a Class Member who submits a timely and valid Proof of Claim Form to the Claims Administrator, in accordance with the requirements established by the District Court, that is approved for payment from the Net Settlement Fund.

(c) “Bankruptcy Court Approval Order” means the order of the Bankruptcy Court authorizing WMI to consummate the Settlement contemplated herein, and authorizing, to the extent necessary, the use of the proceeds of the Directors’ and Officers’ Liability Insurance Policies for the payment and funding of the Settlement Amount.

(d) “Claim” means a completed and signed Proof of Claim Form submitted to the Claims Administrator in accordance with the instructions on the Proof of Claim Form.

(e) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit “2” to Exhibit “A”, that a Claimant or Class Member must complete

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1 in order that the Claimant or Class Member may be eligible to share in a distribution of the Net  
2 Settlement Fund.

3 (f) “Claimant” means a person or entity that submits a Claim Form to the Claims  
4 Administrator seeking to share in the proceeds of the Net Settlement Fund.

5 (g) “Claims Administrator” means the firm retained by Lead Plaintiff and Lead  
6 Counsel, subject to approval of the District Court, to provide all notices approved by the District  
7 Court to potential Class Members and to administer the Settlement.

8 (h) “Class” means the class defined in paragraph 870 of the Amended Complaint  
9 and modified by Orders of the District Court dated, May 15, 2009, October 27, 2009, and October  
10 12, 2010. Specifically, the Class includes all persons and/or entities who purchased or otherwise  
11 acquired the WMI Class Securities during the Class Period and were damaged thereby. Excluded  
12 from the Class are (i) Defendants; (ii) members of the Immediate Family of each Individual  
13 Defendant; (iii) any other person who was an officer or director of WMI, Deloitte, any of the  
14 Underwriter Defendants, Lehman, or BOA during the Class Period; (iv) any firm, trust, corporation,  
15 or other entity in which any Defendant has or had a controlling interest; (v) any person who  
16 participated in the wrongdoing alleged in the Action; (vi) TPG Capital and other purchasers of equity  
17 securities issued by WMI in connection with the \$7 billion capital issuance pursuant to the  
18 agreements entered into by and among TPG Capital and WMI and other investors, announced by the  
19 Company on April 8, 2008 (the “TPG Deal”), to the extent that such purchasers exercised distinct  
20 rights and diligence opportunities afforded them in connection with the TPG Deal; and (vii) the legal  
21 representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any such  
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1 excluded party, provided that any Investment Vehicle shall not be deemed an excluded person or  
 2 entity by definition. Also excluded from the Class are any persons or entities who exclude  
 3 themselves by filing a request for exclusion in accordance with the requirements set forth in the  
 4 Notice.

5 (i) “Class Distribution Order” means an order entered by the District Court  
 6 authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to  
 7 Authorized Claimants.

8 (j) “Class Member” means a person or entity that is a member of the Class,  
 9 including, without limitation, Lead Plaintiff and the Additional Named Plaintiffs, and does not  
 10 exclude himself, herself or itself by filing a request for exclusion in accordance with the  
 11 requirements set forth in the Notice.

12 (k) “Class Period” means the period from October 19, 2005 to July 23, 2008.

13 (l) “Contributing Insurers” means those insurers issuing the Directors' and  
 14 Officers' Liability Insurance Policies, as defined below, and (1) who contribute to the Settlement  
 15 Amount, and/or (2) whose applicable Directors' and Officers' Liability Insurance Policy proceeds  
 16 have been exhausted as of the date the Settlement Amount is fully funded, by (a) payment of defense  
 17 fees and costs or (b) payment of settlements of matters other than the Action on behalf of any  
 18 insureds under the Directors' and Officers Liability Insurance Policies.

19 (m) “Defendants” means the Settling Defendants and all other persons or entities  
 20 that were named as defendants in the Consolidated Complaint or the Amended Complaint.

21 (n) “Directors' and Officers' Liability Insurance Policies” means the following  
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1 policies with a policy period of May 1, 2007 to May 1, 2008: (i) National Union (AIG) Policy  
 2 Number 741-98-06 (“National Union Policy”) with an aggregate limit of \$25,000,000; (ii) XL  
 3 Specialty Policy Number ELU097687-07 (“XL Specialty Policy”) with an aggregate limit of  
 4 \$15,000,000 excess of the National Union Policy; (iii) Twin City Fire (Hartford) Policy Number  
 5 DA1497374 (“Twin City Fire Policy”) with an aggregate limit of \$15,000,000 excess of the National  
 6 Union Policy and the XL Specialty Policy; (iv) ACE American Policy Number DOXG21669994 004  
 7 (“ACE American Policy”) with an aggregate limit of \$15,000,000 excess of the National Union  
 8 Policy, the XL Specialty Policy and Twin City Fire Policy; (v) Arch Insurance Policy Number  
 9 DOX0006090-02 (“Arch Insurance Policy”) with an aggregate limit of \$15,000,000 excess of the  
 10 National Union Policy, the XL Specialty Policy, the Twin City Fire Policy and the ACE American  
 11 Policy; (vi) Continental Casualty Company (Continental) Policy Number 287127607 (“Continental  
 12 Policy”) with an aggregate limit of \$5,000,000 excess of the National Union Policy, the XL  
 13 Specialty Policy, the Twin City Fire Policy, the ACE American Policy and the Arch Insurance  
 14 Policy; (vii) Federal Insurance Company Policy Number 8208-3395 (“Federal Policy”) with an  
 15 aggregate limit of \$5,000,000 excess of the National Union Policy, the XL Specialty Policy, the  
 16 Twin City Fire Policy, the ACE American Policy and the Arch Insurance Policy; (viii) St. Paul  
 17 Mercury Policy Number 590CM2684 (“St. Paul Policy”) with an aggregate limit of \$15,000,000  
 18 excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE  
 19 American Policy, the Arch Insurance Policy, the Continental Policy and the Federal Policy; (ix)  
 20 RSUI Policy Number N-HS625033 (“RSUI Policy”) with an aggregate limit of \$10,000,000 excess  
 21 of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE  
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American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy and the St. Paul Policy; (x) ACE Westchester Policy Number G23822660-001 (“ACE Westchester Policy”) with an aggregate limit of \$10,000,000 excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy and the St. Paul Policy; (xi) AIG Casualty (Starr Excess) Policy Number 347-2092 (“AIG Casualty Policy”) with an aggregate limit of \$20,000,000 excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the RSUI Policy and the ACE Westchester Policy; (xii) XL Specialty Side A Policy Number ELU097685-07 (“XL Specialty Side A Policy”) with an aggregate limit of \$25,000,000 excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the RSUI Policy, the ACE Westchester Policy, and the AIG Casualty Policy; (xiii) Federal Insurance Side A Policy Number 6802-6117 (“Federal Insurance Side A Policy”) with an aggregate limit of \$25,000,000 in excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the RSUI Policy, the ACE Westchester Policy, the AIG Casualty Policy and the XL Specialty Side A Policy; (xiv) Twin City Fire (Hartford) Side A Policy Number DA0218197 (“Twin City Fire Side A Policy”) with an aggregate limit of \$10,000,000 in excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul Policy, the

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1 RSUI Policy, the ACE Westchester Policy, the AIG Casualty Policy, the XL Specialty Side A Policy  
 2 and the Federal Insurance Side A Policy; (xv) Continental Casualty Company (Continental) Side A  
 3 Policy Number 287127641-2 (“Continental Side A Policy”) with an aggregate limit of \$5,000,000 in  
 4 excess of the National Union Policy, the XL Specialty Policy, the Twin City Fire Policy, the ACE  
 5 American Policy, the Arch Insurance Policy, the Continental Policy, the Federal Policy, the St. Paul  
 6 Policy, the RSUI Policy, the ACE Westchester Policy, the AIG Casualty Policy, the XL Specialty  
 7 Side A Policy, the Federal Insurance Side A Policy and the Twin City Fire Side A Policy; (xvi) Axis  
 8 Reins Co. Side A Policy Number RNN 713043/01/2007 (“Axis Reins Co. Side A Policy”) with an  
 9 aggregate limit of \$10,000,000 in excess of the National Union Policy, the XL Specialty Policy, the  
 10 Twin City Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy,  
 11 the Federal Policy, the St. Paul Policy, the RSUI Policy, the ACE Westchester Policy, the AIG  
 12 Casualty Policy, the XL Specialty Side A Policy, the Federal Insurance Side A Policy and the Twin  
 13 City Fire Side A Policy; and (xvii) those certain Lloyd's Underwriters and Companies severally  
 14 subscribing to Side A Policy Number 509QA015507 (“Lloyd's Side A Policy”) with an aggregate  
 15 limit of \$25,000,000 in excess of the National Union Policy, the XL Specialty Policy, the Twin City  
 16 Fire Policy, the ACE American Policy, the Arch Insurance Policy, the Continental Policy, the  
 17 Federal Policy, the St. Paul Policy, the RSUI Policy, the ACE Westchester Policy, the AIG Casualty  
 18 Policy, the XL Specialty Side A Policy, the Federal Insurance Side A Policy, the Twin City Fire Side  
 19 A Policy, the Continental Side A Policy and the Axis Reins Co. Side A Policy.

20 (o) “Effective Date” means the first business day on which, unless otherwise  
 21 waived by the Settling Parties, all of the events and conditions specified in ¶ 32 of this Stipulation  
 22

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1 have been met and have occurred.

2 (p) “Escrow Account” means the account maintained at Valley National Bank to  
3 hold the Settlement Fund, which account, subject to the District Court’s supervisory authority, shall  
4 be under the control of Lead Counsel.

5 (q) “Escrow Agent” means Valley National Bank.

6 (r) “Escrow Agreement” means the agreement between Lead Counsel and the  
7 Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow  
8 Account.

9 (s) “Final” means, with respect to any order or judgment, including, without  
10 limitation, the Bankruptcy Court Approval Order and the Judgment or, if applicable, the Alternative  
11 Judgment: (i) if no appeal is filed, the expiration date of the time provided for filing or noticing of  
12 any appeal under the Federal Rules of Civil Procedure, i.e., thirty (30) days after entry of the order or  
13 judgment; or (ii) if there is an appeal from the order or judgment, the date of (a) final dismissal of all  
14 such appeals, or the final dismissal of any proceeding on certiorari or otherwise to review the order  
15 or judgment, or (b) the date the order or judgment is finally affirmed on appeal, the expiration of the  
16 time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of  
17 certiorari or other form of review, and, if certiorari or other form of review is granted, the date of  
18 final affirmance of the order or judgment following review pursuant to that grant; provided,  
19 however, that any appeal or proceeding seeking subsequent judicial review pertaining solely to an  
20 order issued with respect to (i) attorneys’ fees, costs or expenses, or (ii) the Plan of Allocation (or  
21 such other plan of allocation as the court may approve), shall not in any way delay or preclude the  
22

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Judgment or Alternative Judgment from becoming Final.

(t) “Immediate Family” means an individual’s spouse, parents, siblings, children, grandparents, grandchildren; the spouses of his or her parents, siblings and children; and the parents and siblings of his or her spouse, and includes step and adoptive relationships. In this paragraph, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic partnership or civil union.

(u) “Investment Vehicle” means any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which any Underwriter Defendant, BOA or Lehman has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor but in which the Underwriter Defendant, BOA or Lehman or any of the their respective affiliates is not a majority owner or does not hold a majority beneficial interest. This definition does not bring into the Class any of the Underwriter Defendants, BOA or Lehman.

(v) “Judgment” means the judgment, substantially in the form attached hereto as Exhibit “B,” approving the Settlement, to be entered by the District Court pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

(w) “Lead Counsel” means the law firm of Bernstein Litowitz Berger & Grossmann LLP.

(x) “Lead Plaintiff” means Ontario Teachers.

(y) “Liaison Counsel” means the law firm of Byrnes Keller Cromwell LLP.

(z) “Litigation Expenses” means costs and expenses incurred in connection with

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1 commencing and prosecuting the Action (which may include the costs and expenses of Plaintiffs  
2 directly related to their representation of the Class), for which Lead Counsel intends to apply to the  
3 District Court for reimbursement from the Settlement Fund.

4 (aa) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes;  
5 (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the District  
6 Court; and (iv) any attorneys’ fees awarded by the District Court.

7 (bb) “Notice” means the Notice of (I) Pendency of Class Action and Proposed  
8 Settlements, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys’ Fees and  
9 Reimbursement of Litigation Expenses, which is to be sent to members of the Class, substantially in  
10 the form attached hereto as Exhibit “1” to Exhibit “A”.

11 (cc) “Notice and Administration Costs” means the costs, fees and expenses that  
12 are incurred by the Claims Administrator and/or Lead Counsel in connection with (i) providing  
13 notice to the Class; (ii) administering the Claims process; and (iii) the Escrow Account.

14 (dd) “Other Defendants” means, for purposes of this Settlement, the Underwriter  
15 Defendants, Lehman and Deloitte.

16 (ee) “Plaintiffs” means, collectively, Lead Plaintiff and the Additional Named  
17 Plaintiffs.

18 (ff) “Plaintiffs’ Counsel” means, collectively, Lead Counsel, Liaison Counsel and  
19 all other legal counsel who, at the direction and under the supervision of Lead Counsel, performed  
20 services on behalf of the Class.

21 (gg) “Plan of Allocation” means the proposed plan of allocation of the Net  
22

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1 Settlement Fund set forth in the Notice.

2 (hh) “Preliminary Approval Order” means the order, substantially in the form  
3 attached hereto as Exhibit “A”, to be entered by the District Court preliminarily approving the  
4 Settlement and directing notice be provided to the Class.

5 (ii) “Related Parties” means, (i) with respect to each Individual Defendant, his or  
6 her assigns, attorneys, advisors (other than the Underwriter Defendants), representatives, members of  
7 his or her Immediate Family, heirs, executors, estates, administrators, insurers, including, without  
8 limitation the Contributing Insurers and reinsurers, (ii) with respect to WMI, its predecessors,  
9 successors, past, present or future parents, subsidiaries, affiliates, and each of their respective past or  
10 present officers, directors, agents, partners, principals, members, employees, attorneys, advisors  
11 (other than the Underwriter Defendants), auditors and accountants (other than Deloitte), insurers,  
12 including, without limitation, the Contributing Insurers, and reinsurers; (iii) with respect to all  
13 Settling Defendants, any firm, trust, corporation, or other entity in which any of the Settling  
14 Defendants has or had a controlling interest; provided, however, that Related Parties do not include  
15 any of the Other Defendants (as defined herein) or any of the Other Defendants’ Related Parties as  
16 defined in the Stipulation and Agreement of Settlement in the Action between Lead Plaintiff and the  
17 Underwriter Defendants and in the Stipulation and Agreement of Settlement in the Action between  
18 Lead Plaintiff and Deloitte.

19 (jj) “Released Defendant Parties” means any and all of the Settling Defendants  
20 and each of their respective Related Parties, including, without limitation, the Contributing Insurers.

21 (kk) “Released Claims by Defendants as to Plaintiffs” means any and all claims,  
22

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rights, demands, liabilities or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether known claims or Unknown Claims, that have been or could have been asserted in the Action or in this or any other forum, including, without limitation, in the Chapter 11 Cases, by or on behalf of the Released Defendant Parties or any of them, or the successors and assigns of any of them against Lead Plaintiff, Plaintiffs' Counsel, any other Class Member or any of their respective attorneys, which arise out of or relate in any way to the filing, prosecution, or settlement of the Action (except for claims to enforce the Settlement).

(II) "Settled Claims" means any and all claims, rights, demands, liabilities, or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), to the fullest extent that the law permits their release in this Action or in the Chapter 11 Cases, by or on behalf of Lead Plaintiff or any other Class Members against any of the Released Defendant Parties that have been alleged or could have been alleged in the Action or in the Chapter 11 Cases, including without limitation, the Bankruptcy Claims, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether known claims or Unknown Claims, whether class or individual in nature, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, whether at law or in equity, matured or unmatured, that (i) are based on, relate to or arise out of the allegations, transactions, facts, matters, events, disclosures, statements, occurrences, representations, acts or omissions or failures to act that have been or could

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1 have been alleged in the Action or in the Chapter 11 Cases with respect to the Bankruptcy Claims or  
 2 otherwise, and/or (ii) relate to or arise out of Lead Plaintiff's or any other Class Member's purchase,  
 3 acquisition or holding of WMI Released Securities during the Class Period insofar as it relates in any  
 4 way to any other matter covered in this definition of Settled Claims. Settled Claims do not include,  
 5 release, bar, waive, impair or otherwise impact (i) any claims to enforce the Settlement; (ii) any  
 6 claims of the Class or any Class Member against any of the Other Defendants; (iii) the rights of any  
 7 Class Members to recover moneys from the settlement of the action styled *In re Washington Mutual*  
 8 *Inc. ERISA Litig.*, Lead Case No. 07-cv-1874; (iv) any claims asserted in the actions styled: *In re*  
 9 *Washington Mutual, Inc. California Securities Litigation*, No. 09-664 (W.D. Wash.), *Flaherty &*  
 10 *Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP (W.D.  
 11 Wash.), *Boilermakers National Annuity Trust Fund v. WaMu Mortgage Pass-Through Certificates et*  
 12 *al.*, 09-37 (W.D. Wash.), and *Allstate Bank, et al. v. JPMorgan Chase Bank, NA, et al.*, Index No.  
 13 650398/2011 (N.Y. Supreme); (v) any claim or right to recovery of any Class Member individually  
 14 in the Chapter 11 Cases based solely upon his, her or its status as a holder or beneficial owner of a  
 15 WMI debt or equity security with respect to their rights to participate in the distribution of funds in  
 16 the Chapter 11 Cases upon confirmation of a plan of reorganization or otherwise solely to the extent  
 17 that such distribution is being made on account of such debt or equity security; or (vi) Lead  
 18 Plaintiff's and each other Class Member's right to participate in the distribution of any funds  
 19 recovered from any of the Defendants by any governmental or regulatory agency.

20 (mm) "Settlement" means the compromise and settlement among the Settling Parties  
 21 contemplated by this Stipulation.

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(nn) “Settlement Amount” means One Hundred Five Million Dollars (\$105,000,000.00), in cash.

(oo) “Settlement Fund” means the Settlement Amount plus any and all interest earned thereon from the date the Settlement Amount is deposited into the Escrow Account.

(pp) “Settlement Hearing” means the hearing set by the District Court under Rule 23(e)(1)(c) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(qq) “Settling Defendants’ Counsel” means as to (i) Defendant Killinger, the law firm of Wilson Sonsini Goodrich & Rosati; (ii) Defendants Casey, Rotella, Cathcart, Schneider, and Woods, the law firms of Simpson Thacher & Bartlett LLP and Davis Wright Tremaine LLP; (iii) Defendant Ballenger, the law firm of Orrick Herrington & Sutcliffe LLP; (iv) Defendants Farrell, Frank, Leppert, Lillis, Matthews, Montoya, Murphy, Osmer McQuade, Pugh, Reed, Smith, Stever, and Wood, the law firm of Perkins Coie LLP; and (v) Defendant WMI, the law firm of Weil, Gotshal & Manges LLP.

(rr) “Settling Parties” means the Settling Defendants and Lead Plaintiff, on behalf of itself and the other Class Members, including, without limitation, the Additional Named Plaintiffs.

(ss) “Summary Notice” means the Summary Notice of (I) Pendency of Class Action and Proposed Settlements, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit “3” to Exhibit “A”, to be published as set forth in the Preliminary Approval Order.

(tt) “Taxes” means: (i) all federal, state and/or local taxes of any kind on any

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1 income earned by the Settlement Fund after it is deposited into the Escrow Account; and (ii) the  
 2 expenses and costs incurred by Lead Counsel in connection with determining the amount of, and  
 3 paying, any federal, state and/or local taxes of any kind owed by the Settlement Fund (including,  
 4 without limitation, expenses of tax attorneys and accountants).

5 (uu) “Underwriter Defendants” means Goldman, Sachs & Co., Morgan Stanley &  
 6 Co., Incorporated (now known as Morgan Stanley & Co. LLC), Credit Suisse Securities (USA)  
 7 LLC, Deutsche Bank Securities Inc., UBS Securities LLC, J.P. Morgan Securities Inc., Barclays  
 8 Capital Inc., Keefe, Bruyette & Woods, Inc., Cabrera Capital Markets, LLC, the Williams Capital  
 9 Group, L.P., Citigroup Global Markets, Inc., Greenwich Capital Markets, Inc.(now known as RBS  
 10 Securities Inc.), BNY Mellon Capital Markets LLC (successor to BNY Capital Markets, Inc.), and  
 11 Samuel A. Ramirez & Company, Inc.

12 (vv) “Unknown Claims” means any Settled Claims which Lead Plaintiff or other  
 13 Class Members do not know or suspect to exist in his, her or its favor at the time of the release of the  
 14 Released Defendant Parties, and any Released Claims by Defendants as to Plaintiffs which any  
 15 Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of the  
 16 release of Lead Plaintiff, Plaintiffs’ Counsel, the other Class Members and their respective attorneys,  
 17 which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this  
 18 Settlement. With respect to any and all Settled Claims and Released Claims by Defendants as to  
 19 Plaintiffs, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and  
 20 each of the Settling Defendants shall expressly waive, and each of the other Class Members and each  
 21 of the other Released Defendant Parties shall be deemed to have waived, and by operation of the  
 22

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Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff and each of the Settling Defendants acknowledge, and each of the other Class Members and each of the other Released Defendant Parties shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for as a key element of the Settlement.

(ww) “WMI Class Securities” means WMI common stock; the Floating Rate Notes (CUSIP 939322AW3); the 7.250% Notes (CUSIP 939322AY9); the 7.75% Series R Stock (CUSIP 939322814); and Washington Mutual Capital Trust 2001’s 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS) Units, maturing 7/1/2041 (“Capital Trust Unit Preferred”) (CUSIP 939322848).

(xx) “WMI Released Securities” means, collectively, the WMI Class Securities, the 5.50% Notes (CUSIP 939322AX1) and the Series K Stock (CUSIP 939322830).

### **RELEASE OF CLAIMS**

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action against the Settling Defendants and the Bankruptcy Claims against WMI, and shall fully and finally release any and all Settled Claims against all Released Defendant Parties

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1 and shall also fully and finally release any and all Released Claims by Defendants as to Plaintiffs  
2 against Lead Plaintiff, Plaintiffs' Counsel, each of the other Class Members and each of their  
3 respective attorneys.

4 3. Upon the Effective Date: (i) Lead Plaintiff and all of the other Class Members, on  
5 behalf of themselves, their respective heirs, executors, administrators, predecessors, successors,  
6 assigns and agents, shall be deemed by operation of law to have irrevocably, absolutely and  
7 unconditionally, fully, finally and forever released, waived, discharged and dismissed, with  
8 prejudice, each and every Settled Claim against every Released Defendant Party, including, without  
9 limitation, the Bankruptcy Claims against WMI, and shall forever be enjoined from prosecuting  
10 any or all Settled Claims against any Released Defendant Party, including, without limitation, the  
11 Bankruptcy Claims against WMI; and (ii) the Bankruptcy Claims shall be withdrawn, with  
12 prejudice, in their entirety.

13 4. Upon the Effective Date, each of the Settling Defendants, and each of the other  
14 Released Defendant Parties, on behalf of themselves, their respective heirs, executors,  
15 administrators, predecessors, successors, assigns and agents, shall be deemed by operation of law to  
16 have irrevocably, absolutely and unconditionally, fully, finally, and forever released, waived,  
17 discharged and dismissed, with prejudice, each and every of the Released Claims by Defendants as  
18 to Plaintiffs against Lead Plaintiff, Plaintiffs' Counsel and the other Class Members and their  
19 respective attorneys, and shall forever be enjoined from prosecuting any or all of the Released  
20 Claims by Defendants as to Plaintiffs against Lead Plaintiff, each Plaintiffs' Counsel, each of the  
21 other Class Members and each of their respective attorneys.

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**THE SETTLEMENT CONSIDERATION**

5. In consideration of the Settlement of the Settled Claims, including without limitation claims asserted in the Action under the Securities Act and under the Exchange Act, the Contributing Insurers (which, as represented by the Individual Defendants, have consented to payment of the Settlement Amount pursuant to the terms of the Stipulation) shall pay, in full satisfaction of the monetary obligations under the terms of the Settlement, One Hundred Five Million Dollars (\$105,000,000.00), in cash, such amount to be deposited into the Escrow Account within thirty (30) calendar days after the latest of: (a) the Preliminary Approval Order being entered by the District Court, (b) the Bankruptcy Court Approval Order being entered by the Bankruptcy Court provided however, that until the Bankruptcy Court Order becomes Final, no funds may be withdrawn from the Escrow Account other than to pay Taxes and until the Bankruptcy Court Order becomes Final, any instructions to the Escrow Agent shall require the signature of Perkins Coie in addition to Lead Counsel; and (c) receipt by Individual Defendants' Counsel from Lead Counsel of full and complete wiring or other instructions necessary for such payment, an executed W-9 for the Settlement Fund, and payee name and address for delivery of payment by check.

**USE OF SETTLEMENT FUND**

6. The Settlement Fund shall be used to pay: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the District Court; and (iv) any attorneys' fees awarded by the District Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 16-25 below.

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1           7.       Except as expressly provided herein or pursuant to an Order of the District Court, the  
2 Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held  
3 by the Escrow Agent shall be deemed to be in the custody of the District Court and shall remain  
4 subject to the jurisdiction of the District Court until such time as the Settlement Fund shall be  
5 distributed or returned pursuant to the terms of this Stipulation and/or further Order of the District  
6 Court. The Escrow Agent shall invest the Settlement Fund in United States Treasury Bills (or a  
7 mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued  
8 thereon, except that any residual cash balance in the Escrow Account of less than Two Hundred Fifty  
9 Thousand Dollars (\$250,000.00) may be invested in money market mutual funds comprised  
10 exclusively of investments secured by the full faith and credit of the United States. In the event that  
11 the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or  
12 any portion of the Settlement Fund held by the Escrow Agent may be deposited in a non-interest  
13 bearing account that is fully insured by the FDIC.

14           8.       The Settling Parties agree that the Settlement Fund is intended to be a Qualified  
15 Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as  
16 administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3),  
17 shall be solely responsible for filing or causing to be filed all informational and other tax returns as  
18 may be necessary or appropriate (including, without limitation, the returns described in Treasury  
19 Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this  
20 paragraph and, in all events, shall reflect that all taxes on the income earned on the Settlement Fund  
21 shall be paid out of the Settlement Fund as provided below. Lead Counsel shall also be responsible  
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1 for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the  
2 Settlement Fund. Upon written request, the Individual Defendants will provide to Lead Counsel the  
3 statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the  
4 Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make  
5 such elections as are necessary or advisable to carry out this paragraph, including, as necessary,  
6 making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the  
7 Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or  
8 cause to be taken all actions as may be necessary or appropriate in connection therewith.

9         9. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the  
10 Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement,  
11 and without prior Order of the District Court. Any tax returns prepared for the Settlement Fund (as  
12 well as the election set forth therein) shall be consistent with the previous paragraph and in all events  
13 shall reflect that all Taxes (including any interest or penalties) on the income earned by the  
14 Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settlement Fund  
15 shall indemnify and hold harmless the Released Defendant Parties for federal, state and/or local  
16 taxes incurred in connection with the taxation of the Settlement Fund (including, without limitation,  
17 taxes paid by reason of any such indemnification).

18         10. This is not a claims-made settlement. Upon the occurrence of the Effective Date,  
19 none of the Contributing Insurers or any other person or entity who or which paid any portion of the  
20 Settlement Amount, shall have any right to the return of the Settlement Fund or any portion thereof  
21 irrespective of the number of Claims filed, the collective amount of losses of Authorized Claimants,  
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1 the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net  
2 Settlement Fund.

3 11. The Claims Administrator shall discharge its duties under Lead Counsel's supervision  
4 and subject to the jurisdiction of the District Court. Regardless of whether the Effective Date occurs,  
5 the Released Defendant Parties shall have no responsibility whatsoever for the administration of the  
6 Settlement, and shall have no liability whatsoever to any person or entity, including, but not limited  
7 to, Plaintiffs, Plaintiffs' Counsel or any other Class Members or their respective attorneys, in  
8 connection with any such administration; provided, however, that the Settling Defendants and their  
9 respective counsel shall use their reasonable best efforts to assist Lead Counsel in obtaining the  
10 Company's transfer records, consisting of the Class Period WMI Class Securities holders' names  
11 and addresses in electronic form (at no cost to the Settlement Fund, Lead Counsel or the Claims  
12 Administrator), in order to identify and provide notice to the Class. Lead Counsel shall cause the  
13 Claims Administrator to mail the Notice and Proof of Claim to those members of the Class at the  
14 address of each such person as set forth in the records of WMI or its transfer agent (to the extent that  
15 it is able to obtain such records) or who otherwise may be identified through further reasonable  
16 effort. Lead Counsel also shall cause the Summary Notice to be published pursuant to the terms of  
17 the Preliminary Approval Order or whatever other form or manner might be ordered by the District  
18 Court.

19 12. Lead Counsel may pay from the Settlement Fund, without further approval from  
20 Settling Defendants or further Order of the District Court, all reasonable Notice and Administration  
21 Costs actually incurred. Such costs and expenses shall include, without limitation, the actual costs of  
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1 publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding the  
 2 Notice to their beneficial owners, the administrative expenses incurred and fees charged by the  
 3 Claims Administrator in connection with providing Notice and processing the submitted claims, and  
 4 the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the  
 5 terms of this Stipulation, all Notice and Administration Costs paid or incurred, including any related  
 6 fees, shall not be returned or repaid to the Contributing Insurers, or to any other person or entity who  
 7 or which paid any portion of the Settlement Amount and the Settling Defendants agree that it shall  
 8 be deemed to constitute Loss, as that term is defined in the Directors' and Officers' Liability  
 9 Insurance Policies, which reduces the limits of liability.

#### 10 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

11 13. Lead Counsel will apply to the District Court for an award of attorneys' fees to  
 12 Plaintiffs' Counsel, which shall be a percentage of the Settlement Fund to be approved by Lead  
 13 Plaintiff. Lead Counsel also will apply to the District Court for reimbursement of Litigation  
 14 Expenses to be paid from the Settlement Fund. No Settling Defendant, Contributing Insurer nor any  
 15 other Released Defendant Party, shall take any position with respect to Lead Counsel's application  
 16 for an award of such attorneys' fees and/or Litigation Expenses. Such matters are not the subject of  
 17 any agreement between Settling Defendants and Lead Plaintiff other than what is set forth in this  
 18 Stipulation, and this Stipulation shall otherwise be enforceable according to its terms without regard  
 19 to any modification, denial, appeal or other adverse ruling with respect to Lead Counsel's  
 20 application for an award of attorneys' fees, costs or Litigation Expenses.

21 14. Any attorneys' fees and Litigation Expenses that are awarded by the District Court  
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1 shall be paid to Lead Counsel from the Settlement Fund immediately upon award, notwithstanding  
 2 the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral  
 3 attack on the Settlement or any part thereof, subject to Lead Counsel's obligation to make  
 4 appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate  
 5 as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this  
 6 Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral  
 7 attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed. Lead Counsel  
 8 shall make the appropriate refund or repayment in full no later than thirty (30) days after receiving  
 9 from the Individual Defendants' Counsel or from a court of appropriate jurisdiction notice of the  
 10 termination of the Settlement or notice of any reduction of the award of attorneys' fees and/or  
 11 Litigation Expenses. An award of attorneys' fees and/or Litigation Expenses is not a necessary term  
 12 of this Stipulation or this Settlement and is not a condition of this Stipulation or this Settlement.  
 13 Lead Plaintiff and Lead Counsel may not cancel or terminate the Stipulation or the Settlement based  
 14 on the District Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation  
 15 Expenses. Apart from the Individual Defendants' obligation to cause the Contributing Insurers to  
 16 pay the Settlement Amount to the Escrow Account as set forth in ¶ 5 above, the Released Defendant  
 17 Parties shall have no liability or obligation whatsoever to any person or entity, including, but not  
 18 limited to, Lead Plaintiff, Plaintiffs' Counsel, or any other Class Members or their respective  
 19 counsel, with respect to any attorneys' fees, costs or expenses, or Litigation Expenses, regardless of  
 20 the amount of any attorneys' fees, costs or expenses or Litigation Expenses approved by the District  
 21 Court, and regardless of any termination of this Stipulation or the Settlement contained herein.

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1           15.     Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel  
2 in a manner which it, in good faith, believes reflects the contributions of such counsel to the  
3 prosecution and settlement of the Action.

4                               **CLAIMS ADMINISTRATION**

5           16.     The Claims Administrator shall administer the process of receiving, reviewing and  
6 approving or denying Claims under Lead Counsel's supervision and subject to the jurisdiction of the  
7 District Court. Other than the Settling Defendants' and their respective counsel's obligation to use  
8 their reasonable best efforts to assist Lead Counsel in obtaining the Company's transfer records, as  
9 provided in ¶ 11 herein, neither the Settling Defendants, their respective counsel nor the Released  
10 Defendant Parties shall have any responsibility whatsoever for the administration of the Settlement  
11 or the claims process and shall have no liability whatsoever to any person, including, but not limited  
12 to, Lead Plaintiff, Plaintiffs' Counsel, or any other Class Members or their respective attorneys in  
13 connection with such administration. The Settling Defendants' Counsel shall cooperate in the  
14 administration of the Settlement to the extent reasonably necessary to effectuate its terms.

15           17.     The Claims Administrator shall receive Claims and determine first, whether the  
16 Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of  
17 the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim compared to  
18 the total Recognized Claims (as defined in the Plan of Allocation set forth in the Notice, or in such  
19 other plan of allocation as the District Court approves) of all Authorized Claimants.

20           18.     The Plan of Allocation proposed in the Notice is not a necessary term of this  
21 Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be  
22

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1 approved by the District Court. Lead Plaintiff and Lead Counsel may not cancel or terminate the  
2 Stipulation or the Settlement based on the District Court's or any appellate court's ruling with  
3 respect to the Plan of Allocation, any modification made to the Plan of Allocation, or any other plan  
4 of allocation as may be ordered by the District Court in this Action. No Settling Defendant, nor any  
5 other Released Defendant Party, shall have any involvement in or responsibility or liability  
6 whatsoever for the Plan of Allocation or the allocation of the Net Settlement Fund.

7 19. Any Class Member who does not submit a valid Claim Form will not be entitled to  
8 receive any distribution from the Net Settlement Fund but will otherwise be bound by all of the  
9 terms of this Stipulation and the Settlement, including, without limitation, the terms of the Judgment  
10 and the releases provided for therein or herein, and will be permanently barred and enjoined from  
11 bringing any action, claim, or other proceeding of any kind, including, without limitation, in the  
12 Chapter 11 Cases, against any Released Defendant Party concerning any Settled Claims.

13 20. Lead Counsel shall be responsible for supervising the administration of the Settlement  
14 and disbursement of the Net Settlement Fund. No Settling Defendant, nor any other Released  
15 Defendant Party, shall have any liability, obligation or responsibility whatsoever for the  
16 administration of the Settlement or disbursement of the Net Settlement Fund. No Settling  
17 Defendant, nor any other Released Defendant Party, shall be permitted to review, contest or object to  
18 any Claim Form or any decision of the Claims Administrator or Lead Counsel with respect to  
19 accepting or rejecting any Claim Form or Claim for payment by a Class Member. Lead Counsel  
20 shall have the right, but not the obligation, to waive what it deems to be formal or technical defects  
21 in any Claim Forms submitted in the interests of achieving substantial justice.  
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1           21. For purposes of determining the extent, if any, to which a Class Member shall be  
2 entitled to be treated as an Authorized Claimant, the following conditions shall apply:

3           a. Each Class Member shall be required to submit a Claim Form, supported by such  
4 documents as are designated therein, including proof of the Claimant's loss, or such other documents  
5 or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

6           b. All Claim Forms must be submitted by the date set by the District Court in the  
7 Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Order  
8 of the District Court. Any Class Member who fails to submit a Claim Form by such date shall be  
9 forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to  
10 this Stipulation (unless, by Order of the District Court, late-filed Claim Forms are accepted), but  
11 shall in all other respects be bound by all of the terms of this Stipulation and the Settlement,  
12 including, without limitation, the terms of the Judgment and the releases provided for therein and  
13 herein, and will be permanently barred and enjoined from bringing any action, claim or other  
14 proceeding of any kind, including, without limitation, in the Chapter 11 Cases, against any Released  
15 Defendant Party concerning the Settled Claims. Provided that it is received before the motion for the  
16 Class Distribution Order is filed, a Claim Form shall be deemed to be submitted when posted, if  
17 received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in  
18 accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have  
19 been submitted when actually received by the Claims Administrator;

20           c. Each Claim Form shall be submitted to and reviewed by the Claims  
21 Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this  
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1 Stipulation the extent, if any, to which each Claim shall be allowed, subject to review by the District  
2 Court pursuant to subparagraph (e) below;

3 d. Claims that do not meet the submission requirements may be rejected. Prior to  
4 rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant  
5 in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim Form  
6 submitted. The Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely  
7 fashion and in writing, all Claimants whose Claim the Claims Administrator proposes to reject in  
8 whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant  
9 whose Claim is to be rejected has the right to a review by the District Court if the Claimant so  
10 desires and complies with the requirements of subparagraph (e) below;

11 e. If any Claimant whose Claim has been rejected in whole or in part desires to  
12 contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the  
13 notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and  
14 statement of reasons indicating the Claimant's grounds for contesting the rejection along with any  
15 supporting documentation, and requesting a review thereof by the District Court. If a dispute  
16 concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request  
17 for review to the District Court; and

18 f. The administrative determinations of the Claims Administrator accepting and  
19 rejecting Claims shall be presented to the District Court, on notice to Settling Defendants' Counsel,  
20 for approval by the District Court in the Class Distribution Order.

21 22. Each Claimant shall be deemed to have submitted to the jurisdiction of the District  
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1 Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and  
2 discovery under the Federal Rules of Civil Procedure; provided, however, that such investigation  
3 and discovery shall be limited to that Claimant's status as a Class Member and the validity and  
4 amount of the Claimant's Claim. No discovery shall be allowed on the merits of the Action or this  
5 Settlement in connection with the processing of Claim Forms.

6 23. Lead Counsel will apply to the District Court, on notice to Settling Defendants, for a  
7 Class Distribution Order: (i) approving the Claims Administrator's administrative determinations  
8 concerning the acceptance and rejection of the Claims submitted; (ii) approving payment of any  
9 administration fees and expenses associated with the administration of the Settlement from the  
10 Settlement Fund, and (iii) if the Effective Date has occurred, directing payment of the Net Settlement  
11 Fund to Authorized Claimants from the Escrow Account.

12 24. Payment pursuant to the Class Distribution Order shall be final and conclusive  
13 against all Class Members. All Class Members whose Claims are not approved by the District Court  
14 shall be barred from participating in distributions from the Net Settlement Fund. Whether or not a  
15 Class Member submits a Claim, or any Claim is not allowed either in whole or in part, all Class  
16 Members shall be bound by all of the terms of this Stipulation and the Settlement, including, without  
17 limitation, the terms of the Judgment and the releases provided for therein and herein, and will be  
18 permanently barred and enjoined from bringing any action, claim or other proceeding, including,  
19 without limitation, in the Chapter 11 Cases, against any and all Released Defendant Parties  
20 concerning any Settled Claims.

21 25. All proceedings with respect to the administration, processing and determination of  
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1 Claims and the determination of all controversies relating thereto, including disputed questions of  
2 law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the District  
3 Court.

4 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

5 26. As soon as practical after execution of this Stipulation, the Lead Plaintiff and Lead  
6 Counsel shall apply to the District Court for entry of the Preliminary Approval Order.

7 **BANKRUPTCY COURT APPROVAL**

8 27. Within ten (10) business days of entry of the Preliminary Approval Order, WMI shall  
9 file a motion with the Bankruptcy Court in the Chapter 11 Cases seeking entry of the Bankruptcy  
10 Court Approval Order, which shall contain, in substantially the following form, the following  
11 provisions:

12 ORDERED that the Stipulation and Settlement are fair and reasonable as to WMI  
13 and the Debtors are authorized to take all steps necessary to consummate the  
Settlement;

14 ORDERED that the automatic stay, extant pursuant to section 362 of the Bankruptcy  
15 Code, to the extent applicable, is hereby modified so as to permit, and the  
Contributing Insurers are hereby authorized, to the extent necessary, to pay the  
16 Settlement Amount from the Directors' & Officers' Liability Policies;

17 ORDERED that, on and effective as of the date of the payment by the Contributing  
18 Insurers of the Settlement Amount into the Escrow Account, consistent with this  
Order, and the Settlement and Stipulation, the Contributing Insurers will be deemed  
19 discharged from any liability to any Insureds (as defined by the Directors' &  
Officers' Liability Insurance Policies) or other claimants for having paid the  
Settlement Amount; it is further

20 ORDERED that, upon the Effective Date, as defined in the Stipulation and  
21 Settlement, the Bankruptcy Claims shall be deemed withdrawn, with prejudice, in  
their entirety.

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28. The order to be proposed to the Bankruptcy Court shall contain the following language: “ORDERED that nothing in this Order shall constitute a determination as to whether the proceeds of the insurance policies used in connection with the Settlement are or are not the property of WMI’s estate.” Such language shall also be proposed in the Judgment and any Alternative Judgment.

## TERMS OF THE JUDGMENT

29. If the Settlement contemplated by this Stipulation is approved by the District Court and the Bankruptcy Court Approval Order is entered by the Bankruptcy Court and becomes Final, Lead Counsel and Settling Defendants' Counsel shall request that the District Court enter the Judgment, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

30. The Judgment shall contain a provision, substantially in the form set forth in Exhibit “B” hereto (the “Bar Order”), barring claims for contribution by or against the Settling Defendants, to the fullest extent permitted by 15 U.S.C. §78u-4(f)(7) and any other applicable law or regulation. Nothing herein is intended to broaden the language of the Private Securities Litigation Reform Act of 1995.

31. The Judgment shall also contain a provision, substantially in the form set forth in Exhibit “B” hereto, requiring that any final verdict or judgment that may be obtained by or on behalf of the Class or a Class Member against any person or entity subject to the Bar Order as defined herein be reduced by the greater of: (i) an amount that corresponds to the percentage of responsibility of the Settling Defendants for common damages; or (ii) the amount paid pursuant to this Settlement to the Class or Class Member for common damages.

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**CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION**

32. The Effective Date of this Stipulation shall be conditioned on the occurrence or waiver of all of the following events:

- (a) the District Court has entered the Preliminary Approval Order;
- (b) the Bankruptcy Court has entered the Bankruptcy Court Approval Order and that Order has become Final;
- (c) the Individual Defendants have caused the Contributing Insurers to deposit the Settlement Amount in the Escrow Account in accordance with the provisions of ¶ 5 hereof;
- (d) the Individual Defendants have not exercised their option to terminate the Settlement pursuant to ¶¶ 33 or 34 hereof;
- (e) the District Court has entered the Judgment and the Judgment has become Final, or the District Court has entered an Alternative Judgment, the Individual Defendants have not elected to terminate the Settlement and the Alternative Judgment has become Final.

33. The Individual Defendants (provided they collectively agree) and Lead Plaintiff shall both have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (the “Termination Notice”) to the other parties to this Stipulation within thirty (30) days of: (a) the District Court’s declining to enter the Preliminary Approval Order in any material respect; (b) the Bankruptcy Court’s declining to enter the Bankruptcy Court Approval Order in any material respect; (c) the District Court’s refusal to approve this Stipulation and Settlement or any material part of it; (d) the District Court’s declining to enter the Judgment, or any Alternative Judgment to which the Individual Defendants have consented, in any material respect; (e) the date

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1 upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or  
 2 the Supreme Court; or (f) the date upon which an Alternative Judgment is modified or reversed in  
 3 any material respect by the Court of Appeals or the Supreme Court. However, any decision with  
 4 respect to an application for attorneys' fees or Litigation Expenses, or with respect to any plan of  
 5 allocation, shall not be considered material to the Settlement, shall not affect the finality of the  
 6 Judgment, or an Alternative Judgment, and shall not be grounds for termination by any of the  
 7 Individual Defendants or Lead Plaintiff.

8 34. In addition to the grounds set forth in ¶ 33, the Individual Defendants (provided they  
 9 collectively agree) shall have the right to terminate the Settlement and this Stipulation in the event  
 10 that Class Members requesting exclusion from the Class meet the conditions set forth in a  
 11 confidential supplemental agreement with Lead Plaintiff that is being executed concurrently with  
 12 this Stipulation (the "Supplemental Agreement"). The Supplemental Agreement shall not be filed  
 13 with the District Court and its terms shall not be disclosed in any other manner (other than the  
 14 statements herein and in the Notice) unless and until the District Court requires the Settling Parties to  
 15 file the Supplemental Agreement or disclose its terms or a dispute arises between Lead Plaintiff and  
 16 the Individual Defendants concerning its interpretation or application. If submission of the  
 17 Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the  
 18 District Court, Lead Plaintiff and the Individual Defendants will undertake to have the Supplemental  
 19 Agreement submitted to the District Court *in camera*.

20 35. Except as otherwise provided herein, in the event that the Settlement is terminated or  
 21 the Effective Date otherwise fails to occur: (a) the Settlement and this Stipulation, other than ¶¶ 14,  
 22

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35 and 37, shall be null and void, and without prejudice; (b) none of the terms of the Settlement or this Stipulation, including, without limitation, the releases granted herein, shall be effective or enforceable; and (c) the facts of the Settlement shall not be admissible in any trial of the Action or in the Chapter 11 Cases with respect to the Bankruptcy Claims or otherwise; (d) the Settling Defendants and Lead Plaintiff shall be deemed to have reverted to their respective status in the Action and the Chapter 11 Cases immediately prior to March 23, 2011 and, except as otherwise expressly provided herein, the Settling Defendants and Lead Plaintiff shall proceed in all respects as if this Stipulation and any related orders had not been entered; and (e) any portion of the Settlement Amount previously paid by the Contributing Insurers, together with any interest earned thereon, less any Taxes paid or due with respect to such income, and less Notice and Administration Costs actually incurred and paid or payable, shall be returned to the Contributing Insurers within fourteen (14) business days after joint written notification of such event by the Individual Defendants' Counsel and Lead Counsel to the Escrow Agent pursuant to the terms of the Escrow Agreement. In the event that the Settlement is terminated or the Effective Date otherwise fails to occur at any time after the Contributing Insurers have fully funded the Settlement Amount, the Settlement Amount shall be refunded and distributed in accordance with written instructions to be provided by the Individual Defendants' Counsel to Lead Counsel, which written instructions shall provide, among other things, that any shortfall between the Settlement Amount funded by the Contributing Insurers and the amount actually refunded to the Contributing Insurers is deemed to constitute Loss as that term is defined in the Directors' and Officers' Liability Insurance Policies and which reduces the limits of liability. The content of the written refund instructions provided by the Individual

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Defendants' Counsel to Lead Counsel and such instructions' compliance with the terms of this provision shall be the sole obligation and responsibility of the Individual Defendants' Counsel. Lead Counsel's sole responsibility shall be compliance with the written instructions provided by the Individual Defendants' Counsel and Lead Counsel shall have no other responsibility, obligation or liability with respect to the content of said instructions, including but not limited to, any errors made in connection therewith.

### **PRESERVATION OF CLAIMS IN CHAPTER 11 CASES**

36. For the avoidance of doubt:

a. individual Class Members (including Lead Plaintiff and the Additional Named Plaintiffs) have, or may have, claims in the Chapter 11 Cases based solely upon their status as holders of various debt or equity securities of WMI. This Stipulation and Settlement shall not in any way release, impair or otherwise impact any claim or right to recovery of any Class Member individually in the Chapter 11 Cases based solely upon his, her or its status as a holder or beneficial owner of a WMI debt or equity security with respect to the rights to participate in the distribution of funds in the Chapter 11 Cases upon confirmation of a plan of reorganization or otherwise solely to the extent that such distribution is being made on account of such debt or equity security, in addition to any recovery that he, she or it may be entitled to receive pursuant to this Settlement;

b. except to the extent released pursuant to ¶ 4 hereof, nothing herein shall be deemed to release, bar, waive, impair or otherwise impact any claims belonging to WMI, its affiliates or successors in interest against any Class Members (including Lead Plaintiff and the Additional Named Plaintiffs) or any Individual Defendants; nor shall anything herein be deemed to

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1 release, bar, waive, impair or otherwise impact the defenses of any Class Members (including Lead  
 2 Plaintiff and the Additional Named Plaintiffs) or any Individual Defendants to any such claims  
 3 belonging to WMI or its affiliates and asserted against such persons or entities by WMI or its  
 4 successors in interest; and

5 c. to the extent that any of the Individual Defendants have claims against WMI  
 6 in the Chapter 11 Cases, other than claims for indemnification with respect to payments made to  
 7 defend or settle the Action, nothing herein shall be deemed to release, bar, waive, impair or  
 8 otherwise impact any such claims, or any defenses of WMI with respect thereto; except that to the  
 9 extent that any insurers who issued any of the Directors' and Officers' Liability Insurance Policies  
 10 claim subrogation rights against WMI on the basis of the Individual Defendants' indemnification  
 11 claims, all such claims are preserved, as are WMI's defenses thereto.

12 **NO ADMISSION OF WRONGDOING**

13 37. This Stipulation and Settlement, whether or not consummated, and any actions taken  
 14 pursuant to it:

15 a. shall not be offered or received against any of the Released Defendant Parties  
 16 as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or  
 17 admission by any of the Released Defendant Parties with respect to the truth of any fact alleged by  
 18 Plaintiffs or the validity of any claim that was or could have been asserted against any of the  
 19 Released Defendant Parties in the Action, any other litigation, or in the Chapter 11 Cases with  
 20 respect to the Bankruptcy Claims or otherwise, or the deficiency of any defense that has been or  
 21 could have been asserted in the Action, any other litigation, or in the Chapter 11 Cases with respect  
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1 to the Bankruptcy Claims or otherwise, or of any liability, negligence, fault, or other wrongdoing of  
2 any kind of any of the Released Defendant Parties;

3 b. shall not be offered or received against any of the Released Defendant Parties  
4 as evidence of a presumption, concession or admission of any fault, misrepresentation or omission  
5 with respect to any statement or written document approved or made by any of the Released  
6 Defendant Parties;

7 c. shall not be offered or received against the Lead Plaintiff or any other Class  
8 Members as evidence of any infirmity in the claims of Lead Plaintiff or the other Class Members;

9 d. shall not be offered or received against any of the Released Defendant Parties,  
10 the Lead Plaintiff or any other Class Members, as evidence of a presumption, concession or  
11 admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way  
12 referred to for any other reason as against any of the Released Defendant Parties, the Lead Plaintiff  
13 or any other Class Members, in any other civil, criminal or administrative action or proceeding, other  
14 than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided,  
15 however, that, if this Stipulation is approved by the District Court in the Judgment or Alternative  
16 Judgment, the Settling Defendants, any other Released Defendant Party, Lead Plaintiff and the other  
17 Class Members may refer to it to effectuate the protections from liability granted hereunder or  
18 otherwise to enforce the terms of the Settlement;

19 e. shall not be construed against any of the Released Defendant Parties, Lead  
20 Plaintiff or any other Class Members as an admission, concession, or presumption that the  
21 consideration to be given hereunder represents the amount which could be or would have been  
22

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1 recovered after trial; and

2 f. shall not be construed against Lead Plaintiff or any other Class Members as an  
3 admission, concession, or presumption that any of their claims are without merit or that damages  
4 recoverable under the Amended Complaint would not have exceeded the Settlement Amount.

5 **MISCELLANEOUS PROVISIONS**

6 38. All of the exhibits attached hereto are hereby incorporated by reference as though  
7 fully set forth herein.

8 39. Each of the Individual Defendants warrants that, as to the payments made on behalf  
9 of him or her, at the time of entering into this Stipulation and at the time of such payment that he or  
10 she caused or will cause to be made pursuant to the terms above, he or she was not insolvent, nor  
11 will the payment required to be made by or on behalf of him or her render him or her insolvent,  
12 within the meaning of and/or for the purposes of the Bankruptcy Code, including but not limited to  
13 §§ 101 and 547 thereof. This representation is made by each of the Individual Defendants and not  
14 by his or her counsel.

15 40. If a case is commenced in respect of any of the Individual Defendants, any  
16 Contributing Insurer, or any other person or entity contributing funds to the Settlement Fund under  
17 the Bankruptcy Code, or a trustee, receiver, conservator, or other fiduciary is appointed under any  
18 similar law, and in the event of the entry of a final order of a court of competent jurisdiction  
19 determining the transfer of money to the Settlement Fund or any portion thereof paid for the benefit  
20 of the Class to be a preference, voidable transfer, fraudulent transfer or similar transaction and any  
21 portion thereof is required to be returned, and such amount is not promptly deposited to the  
22

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1 Settlement Fund by others, then, at the election of Lead Plaintiff, the Settling Parties shall jointly  
2 move the District Court to vacate and set aside the releases given and the Judgment or Alternative  
3 Judgment, if applicable, entered in favor of the Settling Defendants and the other Released  
4 Defendant Parties pursuant to this Stipulation, which releases and Judgment, or Alternative  
5 Judgment, shall be null and void as to the Settling Defendants and the other Released Defendant  
6 Parties, and the Settling Defendants and Lead Plaintiff shall be restored to their respective positions  
7 in the Action and in the Chapter 11 Cases as provided in ¶ 35 (including, without limitation, the  
8 reinstatement of the Bankruptcy Claims) and any cash amounts in the Settlement Fund shall be  
9 returned as provided in the same paragraph.

10 41. Lead Plaintiff and the Settling Defendants intend this Settlement to be a final and  
11 complete resolution of all Settled Claims, including, without limitation, the Bankruptcy Claims.  
12 Accordingly, Lead Plaintiff and each of the Settling Defendants agree not to assert that the Action or  
13 the Bankruptcy Claims were brought by Plaintiffs or defended by Settling Defendants in bad faith or  
14 without a reasonable basis. Neither Lead Plaintiff nor any Settling Defendant shall assert any claims  
15 of any violation of Rule 11 of the Federal Rules of Civil Procedure or, where applicable, Rule 9011  
16 of the Bankruptcy Rules, relating to the prosecution, defense, or settlement of the Action or the  
17 Bankruptcy Claims. Lead Plaintiff and the Settling Defendants agree that the amount paid and the  
18 other terms of the Settlement were negotiated at arm's-length in good faith by the parties, including  
19 at a mediation conducted by a former United States District Judge, and reflect a Settlement that was  
20 reached voluntarily after consultation with experienced legal counsel.

21 42. This Stipulation may not be modified or amended, nor may any of its provisions be  
22

STIPULATION AND AGREEMENT OF SETTLEMENT  
WITH INDIVIDUAL OFFICER AND DIRECTOR  
DEFENDANTS AND WITH WASHINGTON MUTUAL,  
INC.

1 waived, except by a writing signed by counsel for Lead Plaintiff and the Settling Defendants or their  
2 successors-in-interest.

3 43. The headings herein are used for the purpose of convenience only and are not meant  
4 to have legal effect.

5 44. The administration and consummation of this Settlement as embodied in this  
6 Stipulation shall be under the authority of the District Court (except that the Bankruptcy Court shall  
7 retain jurisdiction over the interpretation and enforcement of the Bankruptcy Court Approval Order),  
8 and the District Court shall retain jurisdiction for the purpose of entering orders providing for awards  
9 of attorneys' fees and Litigation Expenses to Lead Counsel and enforcing the terms of this  
10 Stipulation.

11 45. The waiver by one party of any breach of this Stipulation by any other party shall not  
12 be deemed a waiver by any party of any other prior or subsequent breach of this Stipulation.

13 46. This Stipulation, its exhibits and the Supplemental Agreement constitute the entire  
14 agreement among Lead Plaintiff and the Settling Defendants concerning the Settlement, and no  
15 representations, warranties, or inducements have been made by Lead Plaintiff or any Settling  
16 Defendant concerning this Stipulation and its exhibits other than those contained and memorialized  
17 in such documents or in the Supplemental Agreement.

18 47. This Stipulation may be executed in one or more original and/or faxed counterparts.  
19 All executed counterparts and each of them shall be deemed to be one and the same instrument.

20 48. This Stipulation shall be binding upon, and inure to the benefit of, the successors and  
21 assigns of Lead Plaintiff and the Settling Defendants.

22  
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1           49.     The construction, interpretation, operation, effect and validity of this Stipulation, and  
2 all documents necessary to effectuate it, shall be governed by the internal laws of the State of  
3 Washington without regard to conflicts of laws, except to the extent that federal law requires that  
4 federal law govern.

5           50.     This Stipulation shall not be construed more strictly against one party than another  
6 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of  
7 the parties, it being recognized that it is the result of arm's-length negotiations among the parties  
8 and all parties have contributed substantially and materially to the preparation of this Stipulation.

9           51.     All counsel and any other person executing this Stipulation and any of the exhibits  
10 hereto, or the Supplemental Agreement, warrant and represent that they have the full authority to do  
11 so and that they have the authority to take appropriate action required or permitted to be taken  
12 pursuant to the Stipulation to effectuate its terms.

13           52.     Lead Counsel and Settling Defendants' Counsel agree to cooperate fully with one  
14 another in seeking entry of: (i) the Preliminary Approval Order by the District Court, (ii) the  
15 Bankruptcy Court Approval Order by the Bankruptcy Court, and (iii) the Judgment by the District  
16 Court, and to use best efforts to promptly agree upon and execute all such other documentation as  
17 may be reasonably required to obtain such approvals.

18           53.     If any party is required to give notice to another party under this Stipulation, such  
19 notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery  
20 or facsimile transmission with confirmation of receipt. Notice shall be provided as follows:

21  
22  
STIPULATION AND AGREEMENT OF SETTLEMENT  
WITH INDIVIDUAL OFFICER AND DIRECTOR  
DEFENDANTS AND WITH WASHINGTON MUTUAL,  
INC.

If to Lead Plaintiff or  
Lead Counsel: Bernstein Litowitz Berger & Grossmann LLP  
1285 Avenue of the Americas  
New York, New York 10019  
Telephone: (212) 554 1400  
Facsimile: (212) 554 1444  
Attn: Hannah G. Ross, Esq.

If to Defendant Killinger: Wilson Sonsini Goodrich & Rosati  
Page Mill Road  
Palo Alto, California 94304  
Telephone: (650) 493-9300  
Facsimile: (650) 493-6811  
Attn: Jerome F. Birn, Jr., Esq.

If to the Outside Director  
Defendants: Perkins Coie LLP  
1201 Third Avenue  
Suite 4800  
Seattle, Washington 98101-3099  
Telephone: (206) 359-8477  
Facsimile: (206) 359-9477  
Attn: Ronald L. Berenstein, Esq.

If to Defendant Ballenger: Orrick Herrington & Sutcliffe LLP  
701 5th Avenue  
Suite 5600  
Seattle, Washington 98104-7097  
Telephone: (206) 839-4403  
Facsimile: (206) 839-4301  
Attn: George E. Greer, Esq.

If to Defendants Rotella,  
Casey, Schneider,  
Cathcart and Woods: Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017-3954  
Telephone: (212) 455-3093  
Facsimile: (212) 455-2502  
Attn: Barry R. Ostrager, Esq.

STIPULATION AND AGREEMENT OF SETTLEMENT  
WITH INDIVIDUAL OFFICER AND DIRECTOR  
DEFENDANTS AND WITH WASHINGTON MUTUAL,  
INC.

Master No: 2:08-md-1919 MJP

If to Defendant WMI: Weil, Gotshal & Manges, LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007  
Attn: Brian S. Rosen, Esq.

DATED: June 30, 2011

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GROSSMANN LLP**

**WILSON SONSINI GOODRICH & ROSATI**

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*Liaison Counsel for Plaintiffs*

*Counsel for WMI Outside Director Defendants*

STIPULATION AND AGREEMENT OF SETTLEMENT  
WITH INDIVIDUAL OFFICER AND DIRECTOR  
DEFENDANTS AND WITH WASHINGTON MUTUAL,  
INC.

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STIPULATION AND AGREEMENT OF SETTLEMENT  
WITH INDIVIDUAL OFFICER AND DIRECTOR  
DEFENDANTS AND WITH WASHINGTON MUTUAL,  
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11 *Counsel for Defendants Rotella, Casey,*  
12 *Schneider, Cathcart and Woods*

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17 *Counsel for Defendants Rotella, Casey,*  
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*Counsel for Defendant Washington Mutual, Inc.*

and

19 *Liaison Counsel for All Defendants*

21 #543512.11

22 **STIPULATION AND AGREEMENT OF SETTLEMENT**  
**WITH INDIVIDUAL OFFICER AND DIRECTOR**  
**DEFENDANTS AND WITH WASHINGTON MUTUAL,**  
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Master No: 2:08-md-1919 MJP

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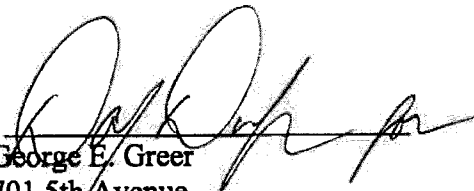
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STIPULATION AND AGREEMENT OF SETTLEMENT  
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# **Exhibit A**

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES LITIGATION,

No. 2:08-md-1919 MJP  
Lead Case No. C08-387 MJP

This Document Relates to: ALL ACTIONS

**[PROPOSED] ORDER PRELIMINARILY APPROVING  
PROPOSED SETTLEMENTS AND PROVIDING FOR NOTICE**

WHEREAS, a consolidated class action is pending in this Court entitled *In re Washington Mutual, Inc. Securities Litigation*, No. 2:08-md-1919 MJP, Lead Case No. C08-387 MJP (the “Action”);

WHEREAS, (i) Lead Plaintiff Ontario Teachers’ Pension Plan Board (“Lead Plaintiff”), on behalf of itself and the Class, (ii) Defendants Kerry K. Killinger, Thomas W. Casey, Stephen J. Rotella, Ronald J. Cathcart, David C. Schneider, John F. Woods, Melissa J. Ballenger, Anne V. Farrell, Stephen E. Frank, Thomas C. Leppert, Charles M. Lillis, Phillip D. Matthews, Regina Montoya, Michael K. Murphy, Margaret Osmer McQuade, Mary E. Pugh, William G. Reed, Jr., Orin C. Smith, James H. Stever and Willis B. Wood, Jr. (collectively, the “Individual Defendants”) and (iii) Washington Mutual, Inc. (“WMI”), have entered into the Stipulation and Agreement of Settlement with Individual Defendants and with Washington Mutual, Inc. dated June \_\_, 2011 (the “D&O/WMI” Stipulation”) providing for the settlement and release of all Settled Claims against the Individual Defendants, WMI, and their respective Related Parties on the terms and conditions set forth in the D&O/WMI Stipulation, subject to approval of this Court (the “D&O/WMI Settlement”);

[PROPOSED] ORDER PRELIMINARILY  
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1 WHEREAS, (i) Lead Plaintiff, on behalf of itself and the Class, and (ii) Defendants  
2 Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated (now known as Morgan Stanley & Co.  
3 LLC), Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., UBS Securities LLC,  
4 J.P. Morgan Securities Inc., Barclays Capital Inc., Keefe, Bruyette & Woods, Inc., Cabrera Capital  
5 Markets, LLC, The Williams Capital Group, L.P., Citigroup Global Markets, Inc., Greenwich  
6 Capital Markets, Inc. (now known as RBS Securities Inc.), BNY Mellon Capital Markets LLC  
7 (successor to BNY Capital Markets, Inc.), and Samuel A. Ramirez & Company, Inc. (collectively,  
8 the “Underwriter Defendants”) have entered into the Stipulation and Agreement of Settlement with  
9 the Underwriter Defendants dated June \_\_, 2011 (the “Underwriters Stipulation”) providing for the  
10 settlement and release of all Settled Claims against the Underwriter Defendants, Banc of America  
11 Securities LLC, and their respective Related Parties on the terms and conditions set forth in the  
12 Underwriters Stipulation, subject to approval of this Court (the “Underwriters Settlement”);

13 WHEREAS, (i) Lead Plaintiff, on behalf of itself and the Class, and (ii) Defendant Deloitte  
14 & Touche LLP (“Deloitte”) have entered into the Stipulation and Agreement of Settlement with  
15 Deloitte & Touche LLP dated June \_\_, 2011 (the “Deloitte Stipulation”) providing for the settlement  
16 and release of all Settled Claims against Deloitte and its Related Parties on the terms and conditions  
17 set forth in the Deloitte Stipulation, subject to approval of this Court (the “Deloitte Settlement”);

18 WHEREAS, for the purposes of this Order, (i) the D&O/WMI Stipulation, the Underwriters  
19 Stipulation, and the Deloitte Stipulation shall be collectively referred to as the “Stipulations”; (ii) the  
20 D&O/WMI Settlement, the Underwriters Settlement, and the Deloitte Settlement shall be  
21 collectively referred to as the “Settlements”; (iii) the Individual Defendants, WMI, the Underwriter  
22 Defendants and Deloitte shall be collectively referred to as the “Settling Defendants”; (iv) the

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[PROPOSED] ORDER PRELIMINARILY  
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Settling Defendants and Lead Plaintiff shall be collectively referred to as the “Settling Parties”; and (v) unless otherwise defined herein, all other capitalized words contained herein shall have the same meanings as set forth in the respective Stipulations;

WHEREAS, in its Order on Class Certification dated October 12, 2010 (Docket No. 759) (the “October 12, 2010 Order”), this Court certified the Action to proceed as a class action on behalf of a class as defined in the Amended Complaint and modified by Orders of this Court dated May 15, 2009 (Docket No. 277), and October 27, 2009 (Docket No. 381);

WHEREAS, Lead Plaintiff has made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlements in accordance with the Stipulations and approving notice of the proposed Settlements to Class Members as more fully described herein; and

WHEREAS, the Court having read and considered the Stipulations and the respective exhibits thereto, including the proposed (a) Notice; (b) Claim Form; (c) Summary Notice; and (d) Judgments and the submissions relating thereto, and finding that substantial and sufficient grounds exist for entering this Order.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Definition of the Certified Class** - The definition of the certified Class to be set forth in the Notice is:

All persons and/or entities who purchased or otherwise acquired the following securities issued by WMI and its subsidiaries: WMI common stock; Floating Rate Notes offered in WMI’s August 2006 Offering (CUSIP 939322AW3); the 7.250% Notes offered in WMI’s October 2007 Offering (CUSIP 939322AY9); the 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock offered in WMI’s December 2007 Offering (CUSIP 939322814); and Washington Mutual Capital Trust 2001’s 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS) Units,

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[PROPOSED] ORDER PRELIMINARILY  
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1 maturing 7/1/2041 (“Capital Trust Unit Preferred”) (CUSIP 939322848)  
2 (collectively, the “WMI Class Securities”) during the period from October 19, 2005  
3 to July 23, 2008 (the “Class Period”), and were damaged thereby. Excluded from the  
4 Class are (i) Defendants; (ii) members of the Immediate Family of each Individual  
5 Defendant; (iii) any other person who was an officer or director of WMI, Deloitte,  
6 any of the Underwriter Defendants, Lehman, or BOA during the Class Period; (iv)  
7 any firm, trust, corporation, or other entity in which any Defendant has or had a  
8 controlling interest; (v) any person who participated in the wrongdoing alleged in the  
9 Action; (vi) TPG Capital and other purchasers of equity securities issued by WMI in  
10 connection with the \$7 billion capital issuance pursuant to the agreements entered  
into by and among TPG Capital and WMI and other investors, announced by the  
Company on April 8, 2008 (the “TPG Deal”), to the extent that such purchasers  
exercised distinct rights and diligence opportunities afforded them in connection with  
the TPG Deal; and (vii) the legal representatives, agents, affiliates, heirs,  
beneficiaries, successors-in-interest, or assigns of any such excluded party, provided  
that any Investment Vehicle (as defined in the Stipulations) shall not be deemed an  
excluded person or entity by definition. Also excluded from the Class are any  
persons or entities who exclude themselves by filing a request for exclusion in  
accordance with the requirements set forth in the Notice.

11 2. **Preliminary Approval of Settlements** – The Court hereby preliminarily approves  
12 the Settlements, as embodied in the respective Stipulations, as being fair, reasonable and adequate as  
13 to Class Members, subject to further consideration at the Settlement Hearing to be conducted as  
14 described below.

15 3. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement  
16 Hearing”) on \_\_\_\_\_, 2011 at \_\_:\_\_ .m. at the United States Courthouse, 700 Stewart  
17 Street, Courtroom \_\_\_, Seattle, Washington, for the following purposes: (a) to determine whether the  
18 proposed Settlements on the terms and conditions provided for in the Stipulations are fair, reasonable  
19 and adequate, and should be approved by the Court; (b) to determine whether the Judgments  
20 substantially in the form attached as Exhibit B to each of the Stipulations should be entered  
21 dismissing the Action with prejudice against the respective Settling Defendants; (c) to determine  
22 whether the proposed Plan of Allocation for the proceeds of the Settlements is fair and reasonable

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1 and should be approved by the Court; (d) to determine whether the motion by Lead Counsel for an  
2 award of attorneys' fees and reimbursement of Litigation Expenses should be approved; and (e) to  
3 consider any other matters that may properly be brought before the Court in connection with the  
4 Settlements. Notice of the Settlements and the Settlement Hearing shall be given to Class Members  
5 as set forth in Paragraph 5 of this Order.

6 4. The Court may adjourn the Settlement Hearing and approve the proposed Settlements  
7 with such modifications as the affected Settling Parties may agree to, if appropriate, without further  
8 notice to the Class.

9 5. **Retention of Claims Administrator and Manner of Notice** – Lead Counsel are  
10 hereby authorized to retain The Garden City Group, Inc. (the "Claims Administrator") to supervise  
11 and administer the notice procedure as well as the processing of claims as more fully set forth below.  
12 Notice of the Settlements and the Settlement Hearing shall be given by Lead Counsel as follows:

13 (a) not later than twenty-one (21) calendar days after entry of this Order (the  
14 "Notice Date"), the Claims Administrator shall cause a copy of the Notice and the Claim Form,  
15 substantially in the forms attached hereto as Exhibits "1" and "2", respectively, to be mailed by first-  
16 class mail to all members of the Class at the address of each such Class Member as set forth in the  
17 records of WMI (to the extent that Lead Counsel is able to obtain such records), or its transfer agent,  
18 or who otherwise may be identified through further reasonable effort;

19 (b) WMI, the Individual Defendants and their respective counsel shall use their  
20 reasonable best efforts to assist Lead Counsel in obtaining the Company's transfer records,  
21 consisting of the Class Period WMI Class Securities' holders' names and addresses in electronic  
22

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[PROPOSED] ORDER PRELIMINARILY  
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form (at no cost to the Settlement Funds, Lead Counsel or the Claims Administrator) in order to identify and provide notice to the Class;

(c) not later than fourteen (14) calendar days after the Notice Date, the Claims Administrator shall cause the Summary Notice, substantially in form attached hereto as Exhibit “3”, to be published once each in *The Seattle Times* and the national edition of *The Wall Street Journal*; and to be transmitted once over *PR Newswire*; and

(d) not later than seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall serve on Settling Defendants’ counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

6. **Approval of Form and Content of Notice** – The Court: (a) approves, as to form and content, the Notice, the Claim Form, and the Summary Notice, attached hereto as Exhibits “1”, “2”, and “3”, respectively; and (b) finds that the mailing and distribution of the Notice and Claim Form and the publication of the Summary Notice in the manner and form set forth in Paragraph 5 of this Order (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Action, the effect of the proposed Settlements (including the releases contained therein) and of their right to object to the proposed Settlements, exclude themselves from the Class and appear at the Settlement Hearing; (iii) constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlements; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 77z-1(a)(7), § 78u-

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[PROPOSED] ORDER PRELIMINARILY  
APPROVING PROPOSED SETTLEMENTS AND  
PROVIDING FOR NOTICE



1 4(a)(7), and all other applicable law and rules. The date and time of the Settlement Hearing shall be  
2 included in the Notice and Summary Notice before they are mailed and published, respectively.

3 7. **Broker and Nominee Procedures** – Brokers and other nominees who purchased or  
4 acquired WMI Class Securities during the Class Period for the benefit of another person or entity  
5 shall be requested to forward the Notice and Claim Form (together, the “Notice Packet”) to all such  
6 beneficial owners within fourteen (14) calendar days after receipt thereof, or send a list of the names  
7 and addresses of such beneficial owners to the Claims Administrator within fourteen (14) calendar  
8 days of receipt thereof in which event the Claims Administrator shall promptly mail the Notice  
9 Packet to such beneficial owners. Upon full compliance with this Order, such brokers or nominees  
10 may seek reimbursement of their reasonable expenses actually incurred in complying with this Order  
11 by providing the Claims Administrator with proper documentation supporting the expenses for  
12 which reimbursement is sought. Such properly documented expenses incurred by nominees in  
13 compliance with the terms of this Order shall be paid from the Settlement Funds in accordance with  
14 the provisions of the Stipulations.

15 8. **Participation in Settlements** – Class Members who wish to participate in the  
16 Settlements and receive a distribution from the Net Settlement Funds must complete and submit the  
17 Claim Form in accordance with the instructions contained therein. Unless the Court orders  
18 otherwise, all Proof of Claim Forms must be postmarked no later than one hundred and twenty (120)  
19 calendar days after the Notice Date. Notwithstanding the foregoing, Lead Counsel may, at its  
20 discretion, accept for processing late claims provided that such acceptance does not delay the  
21 distribution of the Net Settlement Funds to the Class. By submitting a Proof of Claim, a person or  
22

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1 entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its  
2 Claim and the subject matter of the Settlements.

3 9. Each Proof of Claim submitted must satisfy the following conditions: (a) it must be  
4 properly completed, signed and submitted in a timely manner in accordance with the provisions of  
5 the preceding paragraph; (b) it must be accompanied by adequate supporting documentation for the  
6 transactions reported therein, in the form of broker confirmation slips, broker account statements, an  
7 authorized statement from the broker containing the transactional information found in a broker  
8 confirmation slip, or such other documentation as is deemed adequate by Lead Counsel or the  
9 Claims Administrator; (c) if the person executing the Proof of Claim is acting in a representative  
10 capacity, a certification of his, her or its current authority to act on behalf of the Class Member must  
11 be included in the Proof of Claim to the satisfaction of Lead Counsel or the Claims Administrator;  
12 and (d) the Proof of Claim must be complete and contain no material deletions or modifications of  
13 any of the printed matter contained therein and must be signed under penalty of perjury.

14 10. Any Class Member that does not timely and validly submit a Proof of Claim or whose  
15 claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her or its right  
16 to share in the Net Settlement Funds; (b) shall forever be barred from participating in any  
17 distributions therefrom; (c) shall be bound by the provisions of the Stipulations and the Settlements  
18 and all proceedings, determinations, orders and judgments in the Action relating thereto, including,  
19 without limitation, the Judgments and the releases provided for therein, whether favorable or  
20 unfavorable to the Class; and (d) will be fully and forever barred from commencing, maintaining or  
21 prosecuting any of the Settled Claims against each and all of the Released Defendant Parties as  
22 defined in the respective Stipulations, as more fully described in the Notice.

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1           11.     **Exclusion From the Class** – Any member of the Class who wishes to exclude  
2 himself, herself or itself from the Class must request exclusion in writing within the time and in the  
3 manner set forth in the Notice, which shall provide that: (a) any such request for exclusion from the  
4 Class must be mailed or delivered such that it is received no later than twenty-five (25) calendar days  
5 prior to the Settlement Hearing, to: *In re Washington Mutual, Inc. Securities Litigation*, c/o The  
6 Garden City Group, Inc., Claims Administrator, P.O. Box 91310, Seattle, WA 98111-9410; (b) each  
7 request for exclusion must: (i) state the name, address and telephone number of the person or entity  
8 requesting exclusion; (ii) state that such person or entity “requests exclusion from the Class in *In re*  
9 *Washington Mutual, Inc. Securities Litigation*, No. 2:08-md-1919 MJP, Lead Case No. C08-387  
10 MJP”; (iii) state the number of each WMI Class Security (in terms of shares, notes or units) that the  
11 person or entity requesting exclusion purchased and/or sold during the Class Period, as well as the  
12 dates and prices of each such purchase and sale; (iv) state whether the person or entity requesting  
13 exclusion sold or disposed of any: WMI common stock between July 23, 2008 and October 20,  
14 2008, inclusive; units of Capital Trust Unit Preferred between July 23, 2008 and October 21, 2008,  
15 inclusive; and/or Floating Rate Notes, 7.250% Notes or Series R Preferred Stock on or after July 23,  
16 2008, and if so, state the number of shares, units or notes sold, the date(s) of such sale(s) and the  
17 amount of money received for each such sale; and (v) be signed by the person or entity requesting  
18 exclusion or an authorized representative. A request for exclusion shall not be effective unless it  
19 provides all the required information and is received within the time stated above, or is otherwise  
20 accepted by the Court.

21           12.     Any person or entity who or which timely and validly requests exclusion in  
22 compliance with the terms stated in this Order and is excluded from the Class shall not be a Class

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1 Member, shall not be bound by the terms of the Settlements or any other orders or judgments in the  
2 Action and shall have no right to receive any payment out of any of the Net Settlement Funds.

3 13. Any Class Member who or which does not timely and validly request exclusion from  
4 the Class in the manner stated in this Order: (a) shall be deemed to have waived his, her or its right  
5 to be excluded from the Class in this or any other proceeding; (b) shall be fully and forever barred  
6 from requesting exclusion from the Class; (c) shall be bound by the provisions of the Stipulations  
7 and Settlements, all proceedings, determinations, orders and judgments in the Action, including, but  
8 not limited to, the Judgments and the releases provided for therein, whether favorable or unfavorable  
9 to the Class; and (d) will be fully and forever barred from commencing, maintaining or prosecuting  
10 any of the Settled Claims, as defined in the respective Stipulations, against any of the Released  
11 Defendant Parties, as defined in the respective Stipulations and covered by the Judgments entered, as  
12 more fully described in the Notice.

13 14. **Appearance and Objections at Settlement Hearing** – Any Class Member who does  
14 not request exclusion from the Class may enter an appearance in the Action, at his, her or its own  
15 expense, individually or through counsel of his, her or its own choice, by filing with the Clerk of  
16 Court and delivering a notice of appearance to both Lead Counsel and Counsel for the respective  
17 Settling Defendants as set forth in Paragraph 15 below such that it is received no later than twenty  
18 (20) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Class  
19 Member who does not enter an appearance will be represented by Lead Counsel.

20 15. Any Class Member who does not request exclusion from the Class may file written  
21 objections to the proposed Settlements, the proposed Plan of Allocation, and/or the motion for an  
22 award of attorneys' fees and reimbursement of Litigation Expenses and appear and show cause, if

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1 he, she or it has any cause, why the proposed Settlements, the proposed Plan of Allocation and/or  
2 Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses should not be  
3 approved; *provided, however*, that no Class Member shall be heard or entitled to contest the approval  
4 of the terms and conditions of the proposed Settlements, the proposed Plan of Allocation, and/or the  
5 motion for attorneys' fees and reimbursement of Litigation Expenses unless that person or entity has  
6 filed written objections with the Court and served copies of such objections in the manner provided  
7 in the Notice such that it is received no later than twenty-five (25) calendar days prior to the  
8 Settlement Hearing on each of the following:

9 Hannah G. Ross, Esq.  
10 Bernstein Litowitz Berger & Grossmann LLP  
1285 Avenue of the Americas  
11 New York, NY 10019

12 Lead Counsel for Lead Plaintiff and the Class

13 and on counsel for the relevant Settlement(s) as follows:

14 Ronald Berenstein, Esq.  
15 Perkins Coie LLP  
1201 Third Avenue  
Suite 4800  
16 Seattle Washington, 98101-3099

17 Representative Counsel for the  
18 Individual Defendants

19 Jonathan C. Dickey, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
20 New York, NY 10166

21 Counsel for the Underwriter Defendants  
22

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Peter A. Wald, Esq.  
Latham & Watkins LLP  
505 Montgomery Street  
San Francisco, CA 94111

Counsel for Deloitte & Touche LLP

Representative Counsel for the Individual Defendants shall provide copies of any such objections and supporting papers to counsel for the other Individual Defendants and WMI with respect to the D&O/WMI Settlement.

16. Any objections, filings and other submissions by the objecting Class Member must contain a statement of his, her or its objections, as well as the specific reasons for each objection, including the legal and evidentiary support the Class Member wishes to bring to the Court's attention and documents sufficient to prove the number of WMI Class Securities (in terms of shares, notes and units) that the objecting Class Member purchased and sold during the Class Period, as well as the dates and prices of each such purchase and/or sale, and with respect to WMI common stock sold between July 23, 2008 and October 20, 2008 inclusive, Capital Trust Unit Preferred sold between July 23, 2008 and October 21, 2008 inclusive, and Floating Rate Notes, 7.250% Notes or Series R Preferred Stock sold on or after July 23, 2008, state the number of shares, units or notes sold, the date(s) of such sale(s) and the amount of money received for each such sale.

17. Any Class Member who does not make his, her or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to the proposed Settlements, the proposed Plan of Allocation, and Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses and shall forever be barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlements, the Plan of Allocation or the requested

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1 attorneys' fees and Litigation Expenses, or from otherwise being heard concerning the Settlements,  
2 the Plan of Allocation or the requested attorneys' fees and Litigation Expenses in this or any other  
3 proceeding.

4 18. **Stay** – Consistent with the Court's April 6, 2011 Order (Docket No. 864) and until  
5 otherwise ordered by the Court, the Court stays all proceedings in the Action involving the Settling  
6 Defendants other than proceedings necessary to carry out or enforce the terms and conditions of the  
7 respective Stipulations. Pending the Settlement Hearing, the Court enjoins Lead Plaintiff and all  
8 other Class Members from commencing or prosecuting, either directly, indirectly, representatively or  
9 in any other capacity, any and all of the Settled Claims, as defined in the respective Stipulations, as  
10 against each and all of the Released Defendant Parties, as defined in the respective Stipulations.

11 19. **Settlement Administration Fees and Expenses** – All reasonable costs incurred in  
12 identifying and notifying Class Members as well as in administering the Settlement Funds shall be  
13 paid as set forth in the respective Stipulations without further order of the Court.

14 20. **Settlement Funds** – The contents of the Settlement Funds held by Valley National  
15 Bank (which the Court approves as the Escrow Agent), shall be deemed and considered to be *in*  
16 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time  
17 as they shall be distributed pursuant to the respective Stipulations and/or further order(s) of the  
18 Court.

19 21. **Taxes** – Lead Counsel is authorized and directed to prepare any tax returns and any  
20 other tax reporting form for or in respect of the Settlement Funds, to pay from the Settlement Funds  
21 any Taxes owed with respect to the Settlement Funds, and to otherwise perform all obligations with  
22

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[PROPOSED] ORDER PRELIMINARILY  
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1 respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a  
2 manner consistent with the provisions of the respective Stipulations.

3       22.     **Termination** – If any of the Settlements is terminated, or is not approved, or the  
4 Effective Date does not occur as to any of the Settlements, this Order shall become null and void as  
5 to that Settlement (or Settlements) and shall be without prejudice to the rights of Lead Plaintiff, the  
6 Class Members and the affected Settling Defendants, all of whom shall be restored to their  
7 respective positions, as provided for in the relevant Stipulation(s).

8       23.     **Use of this Order** – This Order, the proposed Settlements, the Stipulations and any  
9 and all of their respective terms (and all negotiations, discussions and proceedings in connection  
10 therewith): (a) shall not be offered or received in evidence or used for any other purpose in this or  
11 any other proceeding in any court, administrative agency, arbitration forum, or other tribunal other  
12 than as may be necessary to enforce the terms of this Order and/or the respective proposed  
13 Settlements; (b) shall not be described as, construed as, interpreted as or offered or received against  
14 the respective Settling Defendants as evidence of and/or deemed to be evidence of any presumption,  
15 concession, or admission of wrongdoing by the respective Settling Defendants as to any liability,  
16 negligence or fault, on their part or the validity of any claim by Lead Plaintiff or the merits of any of  
17 their defenses; and (c) shall not be described as, construed as, interpreted as, or offered or received  
18 against Lead Plaintiff or any other Class Member as evidence of any infirmity in the claims of said  
19 Lead Plaintiff and the Class or that the damages recoverable from the respective Settling Defendants  
20 would not have exceeded the respective Settlement Amounts.

21       24.     **Supporting Papers** – Lead Counsel shall file and serve papers in support of the  
22 proposed Settlements, the proposed Plan of Allocation, and Lead Counsel's motion for an award of

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1 attorneys' fees and reimbursement of Litigation Expenses no later than forty (40) calendar days prior  
2 to the Settlement Hearing; if reply papers are necessary, they are to be filed and served no later than  
3 seven (7) calendar days prior to the Settlement Hearing.

4 25. The Court retains jurisdiction to consider all further applications arising out of the  
5 proposed Settlements.

6 SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

7  
8 \_\_\_\_\_  
9 The Honorable Marsha J. Pechman  
United States District Judge

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[PROPOSED] ORDER PRELIMINARILY  
APPROVING PROPOSED SETTLEMENTS AND  
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# **Exhibit A-1**

**EXHIBIT A-1**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES LITIGATION,

No. 2:08-md-1919 MJP  
Lead Case No. C08-387 MJP

This Document Relates to: ALL ACTIONS

**NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED  
SETTLEMENTS, (II) SETTLEMENT FAIRNESS HEARING, AND (III) MOTION FOR AN  
AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

*A Federal Court Authorized This Notice. This is not a solicitation from a lawyer.<sup>1</sup>*

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by a class action lawsuit (the “Action”) pending in the United States District Court for the Western District of Washington at Seattle (the “Court”) if, during the period from October 19, 2005 to July 23, 2008 (the “Class Period”), you purchased or otherwise acquired any of the following securities (the “WMI Class Securities”) issued by Washington Mutual, Inc. (“WMI” or the “Company”) or its subsidiaries, and were damaged thereby:

- WMI common stock (CUSIP 939322103);
- Floating Rate Notes due August 24, 2009, offered in August 2006 (CUSIP 939322AW3) (“Floating Rate Notes”);
- 7.250% Subordinated Notes due November 1, 2017, offered in October 2007 (CUSIP 939322AY9) (“7.250% Notes”);
- 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock, offered in December 2007 (CUSIP 939322814) (“Series R Stock”);
- Washington Mutual Capital Trust 2001’s 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS) Units, maturing July 1, 2041 (CUSIP 939322848) (“Capital Trust Unit Preferred”)

**NOTICE OF SETTLEMENTS:** Please also be advised that the Court-appointed Lead Plaintiff, Ontario Teachers’ Pension Plan Board, on behalf of itself and the Class (defined in paragraph 28 below), has reached three proposed all-cash settlements of the Action, as follows: (i) a \$105 million settlement with

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<sup>1</sup> All capitalized terms that are not defined in this Notice have the meaning ascribed to them in the respective Stipulations and Agreements of Settlement (the “Stipulations”), which are available on the website established for the Settlements at [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com) and on Lead Counsel’s website [www.blbglaw.com](http://www.blbglaw.com).

the Individual Defendants (identified in paragraph 1 below) whereby WMI is also a Settling Defendant (the “D&O/WMI Settlement”); (ii) an \$85 million settlement with the Underwriter Defendants (identified in paragraph 1 below) (the “Underwriters Settlement”); and (iii) an \$18.5 million settlement with Deloitte & Touche LLP (“Deloitte”) (the “Deloitte Settlement”) (collectively, the “Settlements”). The total amount of the Settlements is \$208.5 million, plus interest thereon. If all of the Settlements are approved by the Court, they will resolve all claims in the Action by Class Members against the Settling Defendants (including WMI) as well as other Released Defendant Parties, as defined in paragraph 73 below and the Bankruptcy Claims against WMI in the Chapter 11 Cases (as described in paragraphs 13 and 72 below).

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from each of the three the Settlements if each is approved by the Court. If you are a Class Member, your legal rights will be affected whether or not you act.**

1. **Overview of the Action and the Class:** This Notice relates to three separate proposed Settlements of claims in a pending class action brought by investors alleging that the prices of WMI’s securities were artificially inflated during the Class Period as a result of false statements, non-disclosures, and fraudulent conduct in violation of the federal securities laws. A more detailed description of the Action is set forth in paragraphs 14 – 27 below. The “Settling Defendants” are: (a) Kerry K. Killinger, Thomas W. Casey, Stephen J. Rotella, Ronald J. Cathcart, David C. Schneider, John F. Woods, Melissa J. Ballenger, Anne V. Farrell, Stephen E. Frank, Thomas C. Leppert, Charles M. Lillis, Phillip D. Matthews, Regina Montoya, Michael K. Murphy, Margaret Osmer McQuade, Mary E. Pugh, William G. Reed, Jr., Orin C. Smith, James H. Stever and Willis B. Wood, Jr. (the “Individual Defendants”); (b) Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated (now known as Morgan Stanley & Co. LLC), Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., UBS Securities LLC, J.P. Morgan Securities Inc., Barclays Capital Inc., Keefe, Bruyette & Woods, Inc., Cabrera Capital Markets, LLC, The Williams Capital Group, L.P., Citigroup Global Markets, Inc., Greenwich Capital Markets, Inc. (now known as RBS Securities Inc.), BNY Mellon Capital Markets LLC (successor to BNY Capital Markets, Inc.), and Samuel A. Ramirez & Company, Inc. (the “Underwriter Defendants”); (c) Deloitte, and (d) WMI.<sup>2</sup>

The proposed Settlements each provide for the release of claims against the Settling Defendants in the respective Settlements and others as specified in (i) “Stipulation and Agreement of Settlement with Individual Officer and Director Defendants and with Washington Mutual, Inc.” dated June \_\_, 2011 (the “D&O/WMI Stipulation”); (ii) “Stipulation and Agreement of Settlement with the Underwriter Defendants” dated June \_\_, 2011 (the “Underwriters Stipulation”); and (iii) “Stipulation and Agreement of Settlement with Defendant Deloitte & Touche LLP” dated June \_\_, 2011 (the “Deloitte Stipulation”). All persons and entities who purchased or otherwise acquired WMI Class Securities during the Class Period and were damaged thereby, except for certain persons and entities who are excluded from the Class by definition (*see* paragraph 28 below) or persons and entities who validly elect to exclude themselves from

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<sup>2</sup> WMI was named as a defendant in the Action but, because it filed a petition for bankruptcy, the Action was automatically stayed against it under the Bankruptcy Code, 11 U.S.C. § 362(a). Lehman Brothers Inc. (“Lehman”) was also named as a defendant in the Action, but on September 19, 2008, a proceeding was commenced under the Securities Investor Protection Act of 1970 (SIPA) with respect to Lehman and, as a result, all proceedings against it have also been stayed. Lehman is not a Settling Defendant and is not being released pursuant to the terms of the Settlements.

the Class (*see* paragraphs 82 - 84 below), will be affected by the Settlements, if they are approved by the Court, and may be eligible to receive a payment from some or all of the Settlements.

2. **The Class's Recovery:** Subject to approval by the Court, and with respect to the D&O/WMI Settlement, entry of the Bankruptcy Court Approval Order by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and such order becoming Final (as discussed in paragraph 13 below) and as described more fully below, Lead Plaintiff, on behalf of itself and the Class, has agreed to settle all claims based on the allegations asserted in the Action that were or could have been asserted against the Settling Defendants and other Released Defendant Parties and/or that relate to the purchase, acquisition or holding during the Class Period of the WMI Class Securities and certain other WMI securities as to which claims were asserted in the Action but were dismissed by the Court,<sup>3</sup> in exchange for a total of \$208.5 million in cash. Lead Plaintiff has agreed to settle with the Individual Defendants and include WMI as a Settling Defendant for \$105 million in cash, with the Underwriter Defendants for \$85 million in cash, and with Deloitte for \$18.5 million in cash. The claims asserted against the Individual Defendants were brought pursuant to both the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") while the claims against the Underwriter Defendants and Deloitte were asserted pursuant only to the Securities Act. Subject to certain contingencies explained in the Plan of Allocation set forth below, only those Class Members who are entitled to assert Securities Act claims will be eligible to participate in the Net Settlement Funds created by the Settlements with the Underwriter Defendants and Deloitte, and only those Class Members who are entitled to assert Exchange Act claims will be eligible to participate in the Net Settlement Fund created by the D&O/WMI Settlement. The Settlement Amounts for each of the Settlements will be deposited into separate interest-bearing escrow accounts for the benefit of Class Members (the "Settlement Funds"). The respective Net Settlement Funds (the Settlement Funds less any Taxes, any Notice and Administration Costs and any attorneys' fees and Litigation Expenses awarded by the Court) will be distributed in accordance with the plan of allocation that is approved by the Court, which will determine how the Net Settlement Funds shall be allocated among members of the Class who, by virtue of the claims they could assert, are eligible to participate in the distribution of the respective Net Settlement Funds and who submit timely and valid Proof of Claim and Release Forms (a "Claim Form"). The proposed plan of allocation (the "Plan of Allocation") is included in this Notice at pages \_\_ to \_\_.

3. **Estimate of Average Amount of Recovery Per Share or Note:** Lead Plaintiff's damages expert estimates that approximately 1.433 billion shares of WMI common stock, 461,900 Floating Rate Notes, 625,750 7.250% Notes, 10.227 million shares of Series R Stock, and 37,483,400 units of Capital Trust Unit Preferred purchased during the Class Period may have been affected by the conduct at issue in the Action. Because the number of affected common stock shares is so large – exceeding 1.4 billion shares – if all eligible Class Members elect to participate in the Settlements and all of the Settlements are approved, the estimated average recovery per eligible share, note or unit would be approximately \$0.07 per share of common stock; \$0.33 per \$100 face value of Floating Rate Notes; \$0.47 per \$100 face value of 7.250% Notes; \$9.68 per share of Series R Stock; and \$0.10 per unit of Capital Trust Unit Preferred

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<sup>3</sup> The additional securities as to which Class Members' claims are being released with respect to their purchases, acquisitions or holdings during the Class Period are the 5.50% Notes due August 24, 2011 offered in WMI's August 2006 Offering (CUSIP 939322AX1) ("5.50% Notes") and the Series K perpetual non-cumulative preferred stock offered in WMI's September 2006 Offering (CUSIP 939322830) ("Series K Stock"). The WMI Class Securities and the additional securities as to which claims are being released are referred to as the "WMI Released Securities."

before the deduction of Court-awarded attorneys' fees and expenses, and the costs of providing notice and administering the Settlements. Class Members should note, however, that these are only estimates based on the overall number of potentially affected shares, notes and units. Some Class Members may recover more or less than these estimated amounts.

4. **Average Amount of Damages Per Share:** The parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiff were to prevail in the Action. The Settling Defendants do not agree with the assertion that they engaged in any actionable conduct under the federal securities laws or that any damages were suffered by any members of the Class as a result of their conduct.

5. **Attorneys' Fees and Expenses Sought:** Plaintiffs' Counsel, who have been prosecuting this Action on a wholly contingent basis since its inception in 2008, have not received any payment of attorneys' fees for their representation of the Class and they have advanced the funds to pay expenses necessarily incurred to prosecute the Action. Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in the amount of 22.5% of each Settlement Fund. In addition, Lead Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the prosecution and resolution of the claims against the Settling Defendants, in an amount not to exceed \$5.8 million (which may include an application for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Class). Any fees and expenses awarded by the Court will be paid from the Settlement Funds. Class Members are not personally liable for any such fees or expenses. If all the Settlements are approved, and Lead Counsel's fee and expense application is granted, the average cost per share, note or unit of these fees and expenses will be approximately \$0.02 per share of common stock; \$0.08 per \$100 face value of Floating Rate Notes; \$0.12 per \$100 face value of 7.250% Notes; \$2.45 per share of Series R Stock; and \$0.03 per unit of Capital Trust Unit Preferred.<sup>4</sup>

6. **Identification of Attorneys' Representatives:** Lead Plaintiff and the Class are being represented by Hannah G. Ross, Esq. of Bernstein Litowitz Berger & Grossmann LLP. Any questions regarding the Action or the Settlements should be directed to Ms. Ross at Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, New York, NY 10019, (800) 380-8496, [blbg@blbglaw.com](mailto:blbg@blbglaw.com).

YOUR LEGAL RIGHTS AND OPTIONS IN THESE SETTLEMENTS:	
<b>SUBMIT A CLAIM FORM BY _____, 2011.</b>	This is the only way to be eligible to get a payment from the Settlements. If you are a Class Member and you remain in the Class, you will be bound by the Settlements as approved by the Court and you will give up any "Settled Claims" (as defined below) that you have against the Settling Defendants and the other "Released Defendant Parties" (as defined below), so, if you remain in the Class, it is in your interest to submit a Claim Form.

<sup>4</sup> Should the Court approve less than all the Settlements, attorneys' fees will be paid only on the Settlement Funds created by the approved Settlements. The Litigation Expenses approved by the District Court will be paid from the Settlement Funds created by the approved Settlements.

<b>EXCLUDE YOURSELF FROM THE CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN _____, 2011.</b>	<p>If you exclude yourself from the Class, you will not be eligible to get any payment from any of the Settlement Funds. This is the only option that allows you ever to be part of any other lawsuit against any of the Settling Defendants or the other Released Defendant Parties concerning the Settled Claims.</p>
<b>OBJECT TO THE SETTLEMENTS BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN _____, 2011.</b>	<p>If you do not like one or more of the proposed Settlements, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlements, the Plan of Allocation or the fee and expense request unless you are a Class Member and do not exclude yourself.</p>
<b>GO TO A HEARING ON _____, 2011 AT ____:____.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS <i>RECEIVED</i> NO LATER THAN _____, 2011.</b>	<p>Filing a written objection and notice of intention to appear by _____, 2011 allows you to speak in Court about the fairness of the Settlements, the Plan of Allocation, and/or the request for attorneys' fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and speak to the Court about your objection.</p>
<b>DO NOTHING.</b>	<p>If you are a member of the Class and you do not submit a Claim Form by _____, 2011, you will not be eligible to receive any payment from any of the Settlements. You will, however, remain a member of the Class, which means that you give up your right to sue about the claims that are resolved by the Settlements and you will be bound by any Judgments or Orders entered by the Court in this Action.</p>

**[END OF COVER PAGE]**

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### WHY DID I GET THIS NOTICE?

7. This Notice is being sent to you pursuant to an Order of the United States District Court for the Western District of Washington because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired WMI Class Securities (defined on page 1) during the Class Period. The Court has directed us to send you this Notice because, as a potential Class Member, you have a right to know about your options before the Court rules on the proposed Settlements. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the Court approves the Settlements and the Plan of Allocation (or some other plan of allocation), the claims administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlements and the Court-approved plan of allocation after any objections and appeals are resolved.

8. In a class action lawsuit, the court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Once the class is certified, the court must resolve all issues on behalf of the class members, except for any persons who choose to exclude themselves from the class. In this Action, the Court appointed Ontario Teachers' Pension Plan Board to serve as "Lead Plaintiff" under a federal law governing lawsuits such as this one, and approved Lead Plaintiff's selection of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("Lead Counsel") to serve as Lead Counsel in the Action. The Court certified the Action to proceed as a class action and certified Lead Plaintiff and additional named plaintiffs Pompano Beach Police and Firefighters' Retirement System, Brockton Contributory Retirement System, and Police and Fire Retirement System of the City of Detroit (collectively, "Plaintiffs") as representatives for the Class. (For more information on excluding yourself from the Class, please read "What If I Do Not Want To Be A Part Of The Settlements? How Do I Exclude Myself?," on page \_\_ below.)

9. The court in charge of this case is the United States District Court for the Western District of Washington, and the case is known as *In re Washington Mutual, Inc. Securities Litigation*, No 2:08-md-1919 MJP, Lead Case No. C08-387 MJP. The Judge presiding over this case is the Honorable Marsha J. Pechman, United States District Judge. The persons or entities that are suing are called plaintiffs, and those who are being sued are called defendants. If all three proposed Settlements are approved, they will resolve all claims in the Action by Class Members against the Settling Defendants and will bring the Action to an end.



10. This Notice explains the lawsuit, the Settlements, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Class if you wish to so do. It is also being sent to inform you of the terms of the proposed Settlements, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlements, the proposed Plan of Allocation and the motion by Lead Counsel for attorneys' fees and reimbursement of Litigation Expenses (the "Settlement Hearing").

11. The Settlement Hearing will be held on \_\_\_\_\_, 2011 at \_\_\_\_\_.m., before the Honorable Marsha J. Pechman at the United States District Court for the Western District of Washington, United States Courthouse, 700 Stewart Street, Seattle, WA 98101 to determine:

- (a) whether the proposed Settlements are fair, reasonable and adequate and should be approved by the Court;
- (b) whether all claims asserted in the Action against the Settling Defendants should be dismissed with prejudice and all Settled Claims against the Settling Defendants and the other Released Defendant Parties should be released as set forth in the respective Stipulations;
- (c) whether the proposed Plan of Allocation is fair and reasonable, and should be approved by the Court; and
- (d) whether Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses should be approved by the Court.

12. This Notice does not express any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve each of the Settlements. If the Court approves the Settlements and a plan of allocation, payments to Authorized Claimants will be made after any appeals are resolved, and after the completion of all claims processing. Please be patient.

13. The D&O/WMI Settlement also is conditioned on the entry of the Bankruptcy Court Approval Order by the Bankruptcy Court (and on such Order becoming Final) which is overseeing WMI's bankruptcy case, jointly administered in the Bankruptcy Court with the bankruptcy case of WMI Investment Corp. as *In re Washington Mutual Inc.*, Case No. 08-12229 (MFW) (collectively the "Chapter 11 Cases"). The Bankruptcy Court Approval Order will, among other things, authorize, to the extent necessary, the use of proceeds from officers' and directors' insurance policies for the payment and funding of the \$105,000,000 Settlement Amount of the D&O/WMI Settlement. If the Bankruptcy Court Approval Order is not entered or does not become Final, the D&O/WMI Settlement will not go forward and the parties to the D&O/WMI Stipulation will be restored to their respective positions as of March 23, 2011.

WHAT IS THE CASE ABOUT? WHAT HAS HAPPENED SO FAR?

14. The Action is a class action alleging violations of the federal securities laws by various persons, including WMI, the Individual Defendants, the Underwriter Defendants, and Deloitte.

15. Beginning in November 2007, class action complaints on behalf of purchasers of certain WMI securities were filed in the United States District Court for the Southern District of New York

against WMI and certain of its officers and directors alleging violations of the Exchange Act with respect to public disclosures concerning the lending practices and financial condition of WMI. In early 2008, pursuant to an order of the United States Judicial Panel on Multidistrict Litigation, these actions, together with a number of related actions, were transferred to the United States District Court for the Western District of Washington. On May 7, 2008, the Court entered an Order consolidating the transferred actions and any related pending or subsequently filed securities actions into this Action; appointed Ontario Teachers' Pension Plan Board as Lead Plaintiff, Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel and Byrnes Keller Cromwell LLP as Liaison Counsel for Plaintiffs; and ordered that Lead Plaintiff file an amended complaint.

16. On August 5, 2008, Lead Plaintiff filed the Consolidated Class Action Complaint (the "Consolidated Complaint"), which included Brockton Contributory Retirement System as an additional named plaintiff. The Consolidated Complaint asserted claims against WMI and certain of the Individual Defendants under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, alleging that these defendants made, or controlled others who made, materially false and misleading statements about the effectiveness of WMI's risk management procedures, the fairness and reliability of the appraisals received in connection with WMI's loans, the quality of WMI's mortgage underwriting practices and WMI's financial results, including the appropriate allowances for its loan losses, and that these false and misleading statements had caused the prices of WMI's securities to be artificially inflated during the Class Period. The Consolidated Complaint also asserted claims against WMI, the Underwriter Defendants, Deloitte and certain of the Individual Defendants under Section 11 of the Securities Act of 1933 (the "Securities Act"); against WMI and the Underwriter Defendants under Section 12(a)(2) of the Securities Act; and against certain of the Individual Defendants under Section 15 of the Securities Act alleging that the defendants named in the Securities Act claims were statutorily liable for materially untrue statements and misleading omissions in the registration statement and offering documents for several public securities offerings that WMI conducted during the Class Period.

17. On September 26, 2008, WMI filed a petition for bankruptcy under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, causing the Action to be stayed against it pursuant to 11 U.S.C. § 362(a).

18. On December 8, 2008, all of the Settling Defendants (other than WMI, against which the Action had been stayed) filed motions to dismiss the Consolidated Complaint. Lead Plaintiff opposed the motions and, on May 15, 2009, the Court entered an order granting in part and denying in part the motions to dismiss and ordering that certain claims be re-pled.

19. On June 15, 2009, Lead Plaintiff filed the Amended Consolidated Class Action Complaint (the "Amended Complaint"). In addition to Lead Plaintiff and named plaintiff Brockton Contributory Retirement System, the Amended Complaint included Pompano Beach Police and Firefighters' Retirement System, Mr. Harlan Seymour, and Police and Fire Retirement System of the City of Detroit as additional named plaintiffs. Like the Consolidated Complaint, the Amended Complaint asserted claims under Sections 10(b), 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder; and under Sections 11, 12(a)(2) and 15 of the Securities Act and alleged claims substantially similar to those in the Consolidated Complaint.

20. On July 17, 2009, all of the Settling Defendants (other than WMI) moved to dismiss the Amended Complaint. The motions were fully briefed and argued to the Court and, on October 27, 2009,

the Court entered an Order sustaining the Exchange Act claims against all the Defendants against whom they were asserted but dismissed certain of the Securities Act claims.

21. On January 15, 2010, all of the Settling Defendants (other than WMI) filed answers to the Amended Complaint.

22. On April 30, 2010, Lead Plaintiff filed a motion for class certification which was fully briefed and argued to the Court. On October 12, 2010, the Court entered an Order certifying the Action as a class action, certifying Lead Plaintiff and additional named plaintiffs Pompano Beach Police and Firefighters' Retirement System, Brockton Contributory Retirement System, and Police and Fire Retirement System of the City of Detroit as class representatives, and appointing Lead Counsel as Class Counsel. The Court excluded one named plaintiff from the class and the Series K Stock from the Class.<sup>5</sup> The definition of the Class is set forth in paragraph 28 below.

23. On December 1, 2010, the Underwriter Defendants moved for judgment on the pleadings, a motion in which all other Settling Defendants (other than WMI) joined, contending that the remaining Securities Act claims relating to the August 2006 and the December 2007 offerings were barred by the statute of limitations. The Court, after hearing oral argument, denied the motion on January 28, 2011.

24. Pursuant to the Court's Order dated November 25, 2009, the parties were directed to engage in mediation to determine whether a consensual resolution of the Action could be achieved.

25. Lead Plaintiff and the Settling Defendants (other than WMI) engaged in extensive arm's-length negotiations that included participation by their respective counsel in multiple mediation sessions in February and March 2011 with an experienced mediator, a former Federal District Judge, Layn R. Phillips. With Judge Phillips' assistance, Lead Plaintiff reached agreements-in-principle to settle with the Individual Defendants on March 23, 2011; with Deloitte on March 24, 2011; and with the Underwriter Defendants on March 30, 2011.

26. Before agreeing to the Settlements, Lead Counsel had conducted an extensive investigation into the events and transactions underlying the claims alleged in the Amended Complaint and had also conducted extensive discovery. Lead Counsel analyzed the evidence adduced during its investigation and through discovery, which included almost 500 witness interviews, review of over 23 million pages of documents produced by Defendants and others, and dozens of depositions; consulted with numerous experts, including experts in accounting and auditing, risk management, loss reserve modeling, statistical analysis and damages; and researched the applicable law with respect to the claims of Lead Plaintiff and the Class against the Settling Defendants and their potential defenses. At the time the agreements to settle were reached, Lead Counsel had a thorough understanding of the strengths and weaknesses of Lead Plaintiff's and the Settling Defendants' positions based on the extensive investigation and discovery, the briefing of the multiple motions to dismiss as well as the class certification motion, and the preparation of several detailed mediation statements as well as the review of mediation statements prepared by Settling Defendants. Lead Counsel and Lead Plaintiff believe that each of the proposed Settlements is fair, reasonable and adequate, and in the best interests of the Class.

27. On \_\_\_\_\_, 2011, the Court entered an Order Preliminarily Approving Proposed Settlements and Providing for Notice, which preliminarily approved the Settlements, authorized this

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<sup>5</sup> Former defendant Banc of America Securities LLC ("BOA"), which was sued as one of the Underwriter Defendants, underwrote only the Series K Stock offering, was dismissed from the Action as a result of the District Court's October 12, 2010 Order. BOA is a Released Defendant Party in the Underwriters Settlement.

Notice be sent to potential Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlements.

#### HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENTS?

28. If you are a member of the Class, you are subject to the Settlements, unless you timely request to be excluded. The Class consists of:

All persons and/or entities who purchased or otherwise acquired the following securities issued by WMI and its subsidiaries: WMI common stock; Floating Rate Notes offered in WMI's August 2006 Offering (CUSIP 939322AW3); the 7.250% Notes offered in WMI's October 2007 Offering (CUSIP 939322AY9); the 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock offered in WMI's December 2007 Offering (CUSIP 939322814); and Washington Mutual Capital Trust 2001's 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS) Units, maturing 7/1/2041 ("Capital Trust Unit Preferred") (CUSIP 939322848) (collectively, the "WMI Class Securities") from October 19, 2005 to July 23, 2008 (the "Class Period"), and were damaged thereby.

Excluded from the Class are (i) Defendants; (ii) members of the Immediate Family of each Individual Defendant; (iii) any other person who was an officer or director of WMI, Deloitte, any of the Underwriter Defendants, Lehman, or BOA during the Class Period; (iv) any firm, trust, corporation, or other entity in which any Defendant has or had a controlling interest; (v) any person who participated in the wrongdoing alleged in the Action; (vi) TPG Capital and other purchasers of equity securities issued by WMI in connection with the \$7 billion capital issuance pursuant to the agreements entered into by and among TPG Capital and WMI and other investors, announced by the Company on April 8, 2008 (the "TPG Deal"), to the extent that such purchasers exercised distinct rights and diligence opportunities afforded them in connection with the TPG Deal; and (vii) the legal representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any such excluded party, provided that any Investment Vehicle shall not be deemed an excluded person or entity by definition.<sup>6</sup> Also excluded from the Class are any persons or entities who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice. See "What if I Do Not Want to Participate in the Settlements? How Do I Exclude Myself," on page \_\_ below.

**PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENTS. IF YOU ARE A CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO**

<sup>6</sup> "Investment Vehicle" means any investment company or pooled investment fund, including but not limited to, mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which any Underwriter Defendant, BOA or Lehman has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor but in which the Underwriter Defendant, BOA or Lehman or any of the their respective affiliates is not a majority owner or does not hold a majority beneficial interest. This definition does not bring into the Class any of the Underwriter Defendants, BOA or Lehman.

**PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENTS, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN \_\_\_\_\_, 2011.**

**WHAT ARE LEAD PLAINTIFF'S REASONS FOR THE SETTLEMENTS?**

29. Lead Plaintiff and Lead Counsel believe that the claims asserted against the Settling Defendants have merit. Lead Plaintiff and Lead Counsel recognize, however, the expense and length of continued proceedings necessary to pursue their claims against these defendants through trial and appeals, as well as the difficulties in establishing liability and damages at trial. Lead Plaintiff and Lead Counsel have also taken into account the possibility that the claims asserted in the Amended Complaint might have been dismissed in response to the Settling Defendants' anticipated motions for summary judgment, and have considered issues that would have been decided by a jury in the event of a trial of the Action, including whether certain of the Settling Defendants acted with an intent to mislead investors, whether all of Class Members' losses were caused by the alleged misrepresentations or omissions and the amount of damages. Lead Plaintiff and Lead Counsel have considered the uncertain outcome and trial risk in complex lawsuits like this one, and that, even if they were successful, after the resolution of the appeals that were certain to be taken (which could take years to resolve), certain of the Settling Defendants may not have been able to pay an amount significantly larger than their respective Settlement Amount or even as much as the Settlement Amount. The Action has been stayed against WMI because of the Company's filing for bankruptcy and the Individual Defendants' ability to pay as well as the limited potential for any recovery from the Bankruptcy Claims asserted in the Chapter 11 Cases were significant factors that Lead Plaintiff had to take into account, given the fact that the insurance coverage provided to these defendants by the directors' and officers' policies was a "wasting asset" which would have continued to be depleted by the costs of this and other ongoing litigation.

30. In light of the amount of the Settlements and the immediacy of recovery to the Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlements are fair, reasonable and adequate. Indeed, Lead Plaintiff and Lead Counsel believe that the Settlements achieved are excellent results and in the best interests of the Class. The Settlements, which total \$208.5 million in cash (less the various deductions described in this Notice), individually and collectively provide substantial benefits now as compared to the risk that a similar, smaller, or no recoveries would be achieved after a trial and appeals, possibly years in the future.

31. The Settling Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. The Settling Defendants have agreed to the Settlements solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlements may not be construed as an admission of any wrongdoing by any of the Settling Defendants.

**WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENTS?**



32. If there were no Settlements and Plaintiffs failed to establish any essential legal or factual element of their claims against the Settling Defendants, neither they nor the Class would recover anything from the Settling Defendants. Also, if the Settling Defendants were successful in proving any of their defenses, the Class could recover substantially less than the amounts provided in the Settlements, or nothing at all. Additionally, with respect to the D&O/WMI Settlement in particular, even if Plaintiffs prevailed at trial, and obtained a judgment in excess of the Settlement Amount, recovery on the judgment would have been unlikely. The insurance coverage available to the Individual Defendants is a wasting asset and any recovery out of the Chapter 11 Cases is unlikely. The ongoing prosecution of the Action against the Individual Defendants as well as other costs being paid from these policies in connection with other ongoing litigation and investigations is fast depleting the amount of insurance coverage. Even if Lead Plaintiff prevailed at trial and on the appeal that was sure to follow, by the time Lead Plaintiff could seek to enforce the judgment, the coverage would have been seriously depleted, if not exhausted entirely. Thus, a victory at trial or on appeal against these defendants could well have resulted in a smaller recovery or no recovery at all.

#### HOW MUCH WILL MY PAYMENT BE?

33. At this time, it is not possible to make any determination as to how much a Class Member may receive from the Settlements.

34. Pursuant to the Settlements, the Contributing Insurers have agreed to pay \$105 million in cash with respect to the D&O/WMI Settlement; the Underwriter Defendants have agreed to pay \$85 million in cash; and Deloitte has agreed to pay \$18.5 million in cash. The Settlement Amounts will be deposited into interest-bearing escrow accounts (the "Settlement Funds"). If the Settlements are approved by the Court, the Net Settlement Funds (*i.e.*, the Settlement Funds less (a) all federal, state and local taxes on any income earned by the Settlement Funds and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Funds (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing Notice to Class Members and administering the Settlements on behalf of Class Members; and (c) any attorneys' fees and expenses awarded by the Court) will be distributed to Class Members as set forth in the proposed plan of allocation (the "Plan of Allocation") or such other plan as the Court may approve.

35. After approval of the Settlements by the Court and upon satisfaction of the other conditions to the Settlements, the Net Settlement Funds will be distributed to Authorized Claimants in accordance with the plan of allocation approved by the Court. The Net Settlement Funds will not be distributed until the Court has approved a plan of allocation, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

36. Neither Settling Defendants nor any other person or entity that paid any portion of the Settlement Amounts on any of their behalves are entitled to get back any portion of the respective Settlement Funds once the Court's Order or Judgment approving the relevant Settlement becomes Final. Settling Defendants shall not have any liability, obligation or responsibility for the administration of the Settlements or disbursement of the Net Settlement Funds or the Plan of Allocation.

37. Approval of the Settlements is independent from approval of the plan of allocation. Any determination with respect to the plan of allocation will not affect the Settlements, if approved.

38. Only those Class Members who purchased or otherwise acquired WMI Class Securities during the Class Period **AND WERE DAMAGED AS A RESULT OF SUCH PURCHASES OR ACQUISITIONS**, will be eligible to share in the distribution of the Net Settlement Funds. Each person wishing to participate in the distribution must timely submit a valid Claim Form establishing membership in the Class, and including all required documentation, postmarked on or before \_\_\_\_\_, 2011 to the address set forth in the Claim Form that accompanies this Notice.

39. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked on or before \_\_\_\_\_, 2011 shall be fully and forever barred from receiving payments pursuant to the Settlements but will in all other respects remain a Class Member and be subject to the provisions of the Stipulations and Settlements that are approved, including the terms of any Judgments entered and releases given. This means that each Class Member releases the applicable Settled Claims (as defined in paragraph 73 below) against the applicable Released Defendant Parties (as defined in paragraph 73 below) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the applicable Settled Claims against any of the applicable Released Defendant Parties regardless of whether or not such Class Member submits a Claim Form.

40. Information Required on the Claim Form: Among other things, each Claim Form must state and provide sufficient documentation for each Claimant's position in WMI Class Securities as of the beginning of the Class Period, their transactions during the Class Period, and their closing positions on the dates specified in the Claim Form.

41. Participants and beneficiaries in the WaMu Savings Plan, should not include any information relating to their transactions within the plan in any Claim Form that they may submit in this Action. Claims based on the WaMu Savings Plan's purchases of WMI Class Securities during the Class Period may be made by the plan's trustees. To the extent any of the Defendants or any of the other persons or entities excluded from the Class are participants in the plan, such persons or entities shall not receive, either directly or indirectly, any portion of the recovery that may be obtained from these Settlements by the WaMu Savings Plan.

42. The Court has reserved jurisdiction to allow, disallow or adjust the Claim of any Class Member on equitable grounds.

43. Each Claimant shall be deemed to have submitted to the jurisdiction of the United States District Court for the Western District of Washington with respect to his, her or its Claim Form.

44. Persons and entities that are excluded from the Class by definition or that exclude themselves from the Class will not be eligible to receive a distribution from the Net Settlement Funds and should not submit Claim Forms.

### **PROPOSED PLAN OF ALLOCATION<sup>7</sup>**

45. The objective of the Plan of Allocation is to equitably distribute the settlement proceeds to Class Members who suffered economic losses as a result of the alleged violations of the federal securities laws as opposed to losses caused by market or industry factors or Company specific factors unrelated to the alleged violations of law. The Plan of Allocation reflects Lead Plaintiff's damages expert's analysis

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<sup>7</sup> The Settling Defendants take no position on the Plan of Allocation and, as stated above, continue to deny that WMI Class Securities were ever artificially inflated in price, or that any Class Members suffered any damages.

undertaken to that end, including a review of publicly available information regarding WMI and statistical analyses of the price movements of the WMI Class Securities and the price performance of relevant market and industry indices during the Class Period. The Plan of Allocation, however, is not a formal damage analysis.

46. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlements. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Funds.

47. As noted above, claims were asserted under both the Exchange Act and the Securities Act.<sup>8</sup> For purposes of the Exchange Act claims, Lead Plaintiff's damages expert estimated the alleged artificial inflation in the Common Stock and the Capital Trust Unit Preferred which is shown in Table A. For purposes of the Securities Act claims, the Plan of Allocation is generally based upon application of the statutory damages formula under Section 11 of the Securities Act with respect to transactions in Series R Stock, Floating Rate Notes and 7.250% Notes.

48. Subject to certain contingencies set forth below, the Net Settlement Fund created by the D&O/WMI Settlement (the "Exchange Act Fund") will be distributed to Authorized Claimants with respect to their Recognized Loss Amounts based on their Class Period purchases of Common Stock and Capital Trust Unit Preferred (their "Exchange Act Loss") and the Net Settlement Funds created by the Settlements with the Underwriter Defendants and Deloitte (the "Securities Act Fund") will be distributed to Authorized Claimants with respect to their Recognized Loss Amounts based on their Class Period purchases of Series R Stock, Floating Rate Notes and 7.250% Notes (their "Securities Act Loss").

49. A Securities Act Loss or Exchange Act Loss will be calculated for each eligible purchase or acquisition of the WMI Class Securities that is listed in the Claim Form, and for which adequate documentation is provided. The calculation will depend upon several factors, including (i) which type of WMI Class Securities were purchased or otherwise acquired; (ii) when the WMI Class Securities were purchased or otherwise acquired; and (iii) whether the securities were sold and, if so when they were sold.

50. Calculation of Exchange Act Losses will be based on the change in the level of alleged artificial inflation in the price of the WMI Common Stock and Capital Trust Unit Preferred at the time of purchase or acquisition and at the time of sale. In this case, Lead Plaintiff alleges that the Individual Defendants violated the Exchange Act by making false statements and omitting material facts between October 19, 2005 through and including July 22, 2008, which had the effect of artificially inflating the prices of these securities. Defendants deny all such allegations.

51. In order to have recoverable damages under the Exchange Act claims, plaintiffs must prove that disclosure of the alleged misrepresentations is the cause of the decline in the price of the security. Alleged corrective disclosures that removed the alleged artificial inflation from the prices of the Common Stock and Capital Unit Trust Preferred occurred on October 18, 2007, November 2, 2007, November 7, 2007, December 11, 2007, December 21, 2007, March 7, 2008 and before the beginning of trading on July 23, 2008. Accordingly, in order to have a compensable loss:

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<sup>8</sup> The determination as to which claims should be brought against any given defendant was based on Plaintiffs' analysis of the relevant law and the facts as known at the time the claims were asserted.



(a) Common Stock and Capital Trust Unit Preferred purchased or otherwise acquired from October 19, 2005 through October 17, 2007 must have been held until at least the beginning of trading on October 18, 2007, the day of the first corrective disclosure; and

(b) Common Stock and Capital Trust Unit Preferred purchased or otherwise acquired after the start of trading on October 18, 2007 through and including July 22, 2008, must have been held at least until the next corrective disclosure as listed above.

52. To the extent an Exchange Act Claimant does not satisfy either of the conditions set forth in the preceding paragraph, his, her or its Recognized Loss Amount for those transactions will be zero.

53. Calculation of Securities Act Losses will be generally based upon the statutory measure of damages for claims based on material misrepresentations in registration statements. As noted above, the calculation of Recognized Loss Amounts pursuant to the Plan of Allocation is not intended to be an estimate of, nor indicative of, the amount that a Class Member might have been able to recover after a trial.

### CALCULATION OF SPECIFIC LOSS AMOUNTS

54. Based on the formulas set forth below, a "Recognized Loss Amount" shall be calculated for each purchase or acquisition of the WMI Class Securities listed in the Proof of Claim form and for which adequate documentation is provided. If a Recognized Loss Amount results in a negative number, that Recognized Loss Amount shall be zero.

55. **Exchange Act Claims Recognized Loss Amount Calculations** - For the Common Stock and the Capital Trust Unit Preferred, the Recognized Loss Amount per share or unit shall be calculated as follows:

(a) **Common Stock**

For each share of Common Stock purchased or acquired between October 19, 2005 and July 22, 2008, inclusive, and:

- 1) Sold prior to the close of trading on October 17, 2007, the Recognized Loss Amount is \$0.00.
- 2) Sold at a loss from October 18, 2007 through the close of trading on July 22, 2008, the Recognized Loss Amount shall be *the lesser of*: (i) the amount of artificial inflation per share as set forth in Table A on the date of purchase *minus* the amount of artificial inflation per share as set forth in Table A on the date of the sale; or (ii) purchase/acquisition price *minus* the sale price.
- 3) Sold at a loss from July 23, 2008 through the close of trading on October 20, 2008, the Recognized Loss Amount shall be *the least of*: (i) the amount of artificial inflation per share as set forth in Table A on the date of purchase *minus* the amount of artificial inflation per share as set forth in Table A on the date of the sale; or (ii) purchase/acquisition price *minus* the sale price; or (iii) the purchase price *minus* the average closing price between July 23, 2008 and the date of sale as shown in Table B.
- 4) Held as of the close of trading on October 20, 2008, the Recognized Loss Amount shall be *the lesser of*: (i) the amount of artificial inflation per share as set forth in

Table A on the date of purchase; or (ii) the purchase/acquisition price *minus* \$2.86, the average closing price for the Common Stock between July 23, 2008 and October 20, 2008 as shown at the end of Table B.

(b) **Capital Trust Unit Preferred**

For each unit of Capital Trust Unit Preferred purchased or acquired between October 19, 2005 and July 22, 2008, inclusive, and:

- 1) Sold prior to the close of trading on October 17, 2007, the Recognized Loss Amount is \$0.00.
- 2) Sold at a loss from October 18, 2007 through the close of trading on July 23, 2008, the Recognized Loss Amount shall be *the lesser of*: (i) the amount of artificial inflation per unit as set forth in Table A on the date of purchase *minus* the amount of artificial inflation per unit as set forth in Table A on the date of the sale; or (ii) purchase/acquisition price *minus* the sale price.
- 3) Sold at a loss from July 24, 2008 through the close of trading on October 21, 2008, the Recognized Loss Amount shall be *the least of*: (i) the amount of artificial inflation per unit as set forth in Table A on the date of purchase *minus* the amount of artificial inflation per unit as set forth in Table A on the date of the sale; or (ii) purchase/acquisition price *minus* the sale price; or (iii) the purchase price *minus* the average closing price between July 24, 2008 and the date of sale as shown in Table C.
- 4) Held as of the close of trading on October 21, 2008, the Recognized Loss Amount shall be *the lesser of*: (i) the amount of artificial inflation per unit as set forth in Table A on the date of purchase; or (ii) the purchase/acquisition price *minus* \$13.04, the average closing price for the Capital Unit Trust Preferred between July 24, 2008 and October 21, 2008 as shown at the end of Table C.

56. **Securities Act Claims Recognized Loss Amount Calculations** – For the Series R Stock, the 7.250% Notes and the Floating Rate Notes, the Recognized Loss Amount per share or note shall be calculated as follows:

(a) **Series R Stock**

For each share of Series R Stock purchased or otherwise acquired prior to the close of trading on July 22, 2008, inclusive and:

- 1) Sold at a loss prior to the close of trading on August 5, 2008 (the date of suit), the Recognized Loss Amount shall be *the lesser of*:
  - (x) the purchase/acquisition price *minus* the sale price; or
  - (y) \$1,000 (issue price) *minus* the sale price.
- 2) Sold at a loss from August 6, 2008 through the close of trading on [May 13], 2011, the Recognized Loss Amount shall be *the lesser of*:
  - (x) the purchase/acquisition price *minus* the greater of (i) the sale price or (ii) \$465.00, the closing price on August 5, 2008; or
  - (y) \$1,000 (issue price) *minus* the greater of (i) the sale price or (ii) \$465.00,

the closing price on August 5, 2008.

- 3) Held as of close of trading on [May 13], 2011, the Recognized Loss Amount shall be *the lesser of*:

(x) the purchase/acquisition price minus \$465.00, the closing price on August 5, 2008 (the date of suit); or

(y) \$1,000 (issue price) *minus* \$465.00, the closing price on August 5, 2008 (the date of suit).

(b) **Floating Rate Notes**

- (i) For each \$100 in face value of Floating Rate Notes purchased or otherwise acquired prior to the close of trading on May 13, 2008, and:

- 1) Sold at a loss prior to the close of trading on May 13, 2008 (the date of suit), the Recognized Loss Amount shall be *the lesser of*:

(x) the purchase/acquisition price *minus* the sale price; or

(y) \$100 (issue price) *minus* the sale price.

- 2) Sold at a loss from May 14, 2008 through the close of trading on [May 13], 2011, the Recognized Loss Amount shall be *the lesser of*:

(x) the purchase/acquisition price *minus* the greater of (i) the sale price or (ii) \$93.50, the closing price on May 13, 2008 (the date of suit); or

(y) \$100 (issue price) *minus* the greater of (i) the sale price or (ii) \$93.50, the closing price on May 13, 2008 (the date of suit).

- 3) Held as of the close of trading on [May 13], 2011, the Recognized Loss Amount shall be \$0.00.

- (ii) For each \$100 in Floating Rate Notes purchased or otherwise acquired from May 14, 2008 through the close of trading on July 22, 2008, inclusive, and:

- 1) Sold at a loss prior to the close of trading on [May 13], 2011, the Recognized Loss Amount shall be *the lesser of*:

(x) the purchase/acquisition price *minus* the greater of (i) the sale price or (ii) \$93.50, the closing price on May 13, 2008 (the date of suit); or

(y) \$100 (issue price) *minus* the greater of (i) the sale price or (ii) \$93.50, the closing price on May 13, 2008 (the date of suit).

- 2) Held as of the close of trading on [May 13], 2011, the Recognized Loss Amount shall be \$0.00.

(c) **7.250% Notes**

- (i) For each \$100 in face value of 7.250% Notes purchased or otherwise acquired prior to the close of trading on May 13, 2008 and:

- 1) Sold at a loss prior to the close of trading on May 13, 2008 (the date of suit), the Recognized Loss Amount shall be *the lesser of*:
    - (x) the purchase/acquisition price *minus* the sale price; or
    - (y) \$99.377 (issue price) *minus* the sale price.
  - 2) Sold at a loss from May 14, 2008 through the close of trading on [May 13], 2011, the Recognized Loss Amount shall be *the lesser of*:
    - (x) the purchase/acquisition price *minus* the greater of (i) the sale price or (ii) \$84.47, the closing price on May 13, 2008 (the date of suit); or
    - (y) \$99.377 (issue price) *minus* the greater of (i) the sale price or (ii) \$84.47, the closing price on May 13, 2008 (the date of suit).
  - 3) Held as of the close of trading on [May 13], 2011, the Recognized Loss Amount shall be \$0.00.
- (ii) For each \$100 in face value of 7.250% Notes purchased or otherwise acquired from May 14, 2008 through the close of trading on July 22, 2008, inclusive, and:
- 1) Sold at a loss prior to the close of trading on [May 13], 2011, the Recognized Loss Amount shall be *the lesser of*:
    - (x) the purchase/acquisition price *minus* the greater of (i) the sale price or (ii) \$84.47, the closing price on May 13, 2008 (the date of suit); or
    - (y) \$99.377 (issue price) *minus* the greater of (i) the sale price or (ii) \$84.47, the closing price on May 13, 2008 (the date of suit).
  - 2) Held as of the close of trading on [May 13], 2011, the Recognized Loss Amount shall be \$0.00

57. The sum of a Claimant's Recognized Loss Amounts based on his, her or its purchases or acquisitions of Common Stock and Capital Trust Unit Preferred (as calculated in paragraph 55 above) shall be the Claimant's Exchange Act Loss. The sum of a Claimant's Recognized Loss Amounts based on his, her or its purchases or acquisitions of Series R Stock, Floating Rate Notes and 7.250% Notes (as calculated in paragraph 56 above) shall be the Claimant's Securities Act Loss. The sum of a Claimant's Securities Act Loss and Exchange Act Loss is referred to as his, her or its Recognized Claim.

### ADDITIONAL PROVISIONS

58. The Net Settlement Funds will be allocated among all Authorized Claimants whose Distribution Amount (defined below in paragraph 61) is \$20.00 or greater.

59. If the sum total of the Exchange Act Losses of all Authorized Claimants is greater than the Exchange Act Fund, each Authorized Claimant with an Exchange Act Loss shall receive a *pro rata* share of the Exchange Act Fund, which shall be the Authorized Claimant's Exchange Act Loss divided by the total of all Exchange Act Losses, multiplied by the total amount in the Exchange Act Fund. If the sum total of the Securities Act Losses of all Authorized Claimants is greater than the Securities Act Fund, each Authorized Claimant with a Securities Act Loss shall receive a *pro rata* share of that Securities Act Fund,

which shall be the Authorized Claimant's Securities Act Loss divided by the total of all Securities Act Losses, multiplied by the total amount in the Securities Act Fund.

60. While it is unlikely that the Exchange Act Fund will exceed the total amount of the Exchange Act Losses, should that happen, the excess amount in the Exchange Act Fund shall become available to compensate Authorized Claimants for their Securities Act Losses if the Securities Act Fund is not sufficient to pay the total amount of Securities Act Losses, up to the amount necessary to pay those losses. Should there be any excess remaining after the total amount of Securities Act Losses have been paid, the excess will be distributed *pro rata* to Authorized Claimants based on their Exchange Act Losses. In like manner, should the amount in the Securities Act Fund exceed the total Securities Act Losses, the excess will become available to compensate Authorized Claimants for their Exchange Act Losses if the amount in that Exchange Act Fund is not sufficient to pay the total amount of the Exchange Act Losses, up to the amount necessary to pay those losses, with any remaining balance being distributed *pro rata* to Authorized Claimants based on their Securities Act Losses.

61. The Distribution Amount paid to an Authorized Claimant will be the sum of (i) his, her or its *pro rata* share of the Exchange Act Fund; and (ii) his, her or its *pro rata* share of the Securities Act Fund. If an Authorized Claimant's Distribution Amount calculates to less than \$20.00, no distribution will be made to that Authorized Claimant.

62. If a Class Member has more than one purchase/acquisition or sale of WMI Class Securities during the Class Period, all purchases/acquisitions and sales of like securities shall be matched on a First In, First Out ("FIFO") basis. Sales will be matched first against any holdings of WMI Class Securities of the same security type held at the beginning of the Class Period, and then against purchases/acquisitions of the same security in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

63. Purchases or acquisitions and sales of WMI Class Securities shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance or operation of law of WMI Class Securities during the Class Period shall not be deemed a purchase, acquisition or sale of WMI Class Securities for the calculation of an Authorized Claimant's Securities Act Loss or Exchange Act Loss nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of any WMI Class Securities unless (i) the donor or decedent purchased or otherwise acquired such WMI Class Securities during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such WMI Class Securities; and (iii) it is specifically so provided in the instrument of gift or assignment.

64. The date of covering a "short sale" is deemed to be the date of purchase or acquisition of WMI Class Securities. The date of a "short sale" is deemed to be the date of sale of WMI Class Securities. Under the Plan of Allocation, however, the Securities Act Loss and Exchange Act Loss on all "short sales" is zero. In the event that there is an opening short position in any WMI Class Security, the earliest Class Period purchases of like security shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

65. Option contracts are not securities eligible to participate in the Settlements. With respect to WMI Class Securities purchased or sold through the exercise of an option, the purchase/sale date of the WMI Class Security is the exercise date of the option and the purchase/sale price of the WMI Class Security is the exercise price of the option.

66. To the extent a Claimant had a market gain with respect to his, her, or its purchases/acquisitions of WMI Class Securities during the Class Period, the value of the Claimant's Securities Act Loss and Exchange Act Loss will both be zero. Such Claimants will in any event be bound by the Settlements. To the extent that a Claimant suffered an overall market loss with respect to his, her, or its purchases/acquisition of WMI Class Securities during the Class Period, but that market loss was less than the total Recognized Claim calculated above, then the Claimant's Recognized Claim shall be limited to the amount of the actual market loss and the Claimant's Securities Act Loss and Exchange Act Loss will be reduced proportionally.

67. For purposes of determining whether a Claimant had a market gain with respect to his, her, or its purchases/acquisitions of WMI Class Securities during the Class Period or suffered a market loss, the Claims Administrator shall determine the difference between (i) the Total Purchase Amount<sup>9</sup> and (ii) the sum of the Total Sales Proceeds<sup>10</sup> and Total Holding Value.<sup>11</sup> This difference will be deemed a Claimant's market gain or loss with respect to his, her, or its overall purchases/acquisitions of WMI Class Securities during the Class Period.

68. If any funds remain in the Net Settlement Funds because of uncashed distributions or other reasons, then, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their distribution checks, any balance remaining in the Net Settlement Funds one (1) year after the initial distribution of such funds shall be redistributed to Authorized Claimants who have cashed their initial distribution and who would receive at least \$20.00 from such redistribution, after payment of any unpaid costs or fees incurred in administering the funds, including for such redistribution. Additional redistributions to Authorized Claimants who have cashed their prior distribution checks and who would receive at least \$20.00 on such additional redistributions, subject to the conditions previously noted, may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional redistribution, after the deduction of any additional fees and expenses that would be incurred with respect

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<sup>9</sup> The "Total Purchase Amount" is the total amount the Claimant paid (excluding commissions and other charges) for all WMI Class Securities purchased or acquired during the Class Period.

<sup>10</sup> The Claims Administrator shall match any sales of Common Stock and Capital Trust Unit Preferred during the period from October 19, 2005 through and including October 20, 2008 (for Common Stock) and October 21, 2008 (for Capital Trust Unit Preferred), first against the Claimant's opening position in the like security (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). For Series R Stock, Floating Rate Notes, and 7.250% Notes there are no opening positions since they were issued during the Class Period. The total amount received (excluding commissions and other charges) for (i) sales of Common Stock sold during the period from October 19, 2005 through and including October 20, 2008 (if the sale can be matched against a Class Period purchase/acquisition); (ii) sales of the Capital Trust Unit Preferred sold during the period from October 19, 2005 through and including October 21, 2008 (if the sale can be matched against a Class Period purchase/acquisition); and (iii) sales of Series R Stock, Floating Rate Notes, and 7.250% Notes sold during the period from the offering date of the security through and including [May 13], 2011 (if the sale can be matched against a Class Period purchase/acquisition) shall be the "Total Sales Proceeds".

<sup>11</sup> The Claims Administrator shall ascribe a holding value to the WMI Class Securities purchased or acquired during the Class Period and still held as of the close of trading on October 20, 2008 (for Common Stock), October 21, 2008 (for Capital Trust Unit Preferred), and [May 13], 2011 (for Series R Stock, Floating Rate Notes, and 7.250% Notes) (the "Holding Value") as follows: \$0.08 per share of WMI Common Stock; \$1.10 per unit of Capital Trust Unit Preferred; \$14.01 per share of Series R Stock; \$100.188 per \$100 face value of the Floating Rate Notes; and \$114.00 per \$100 face value of the 7.250% Notes.



to such redistributions, is cost-effective. At such time as it is determined that the redistribution of funds remaining in the Net Settlement Funds is not cost-effective, the remaining balance of the Net Settlement Funds shall be contributed to non-sectarian, not-for-profit 501(c)(3) organizations recommended by Lead Counsel and approved by the Court.

69. Payment pursuant to the Plan of Allocation, or such other plan as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Lead Counsel, Liaison Counsel for Plaintiffs, Settling Defendants and their respective counsel or any of the other Released Defendant Parties, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulations, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiff, Settling Defendants and their respective counsel, and all other Released Defendant Parties shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Funds, the Net Settlement Funds, the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Funds, or any losses incurred in connection therewith.

70. The Plan of Allocation set forth herein is the plan that is being proposed by Lead Plaintiff and Lead Counsel to the Court for approval. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding a modification of the Plan of Allocation will be posted on the settlement website, [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com).

#### WHAT RIGHTS AM I GIVING UP BY REMAINING IN THE CLASS?

71. If you remain in the Class, you will be bound by any orders issued by the Court. For example, as to each Settlement that is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against the applicable Settling Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other members of the Class on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors and assigns, shall be deemed by operation of law to have released, waived, discharged and dismissed each and every Settled Claim (as defined in paragraph 73 below) as against all of the applicable Released Defendant Parties (as defined in paragraph 73 below) and shall forever be enjoined from prosecuting any or all Settled Claims against any Released Defendant Parties.

72. In addition, in the D&O/WMI Settlement (if approved), upon the Effective Date, Lead Plaintiff and all of the other members of the Class on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors, assigns and agents, shall be deemed by operation of law to have irrevocably, absolutely and unconditionally, fully, finally and forever released, waived, discharged and dismissed the Bankruptcy Claims as against WMI. The "Bankruptcy Claims" are certain claims filed in the Chapter 11 Cases with respect to the claims asserted in this Action. While the Bankruptcy Claims and the other Settled Claims are being released, the Settlements will *not* release any claims that individual Class Members might have in the Chapter 11 Cases based solely upon their status as holders or owners of various WMI debt or equity securities (as described in paragraph 76 below).

73. As described in more detail below, the Settled Claims include any claims that (i) were asserted in the Action or that could have been asserted in this Action relating to the various claims and

allegations that were or could have been alleged in the Amended Complaint and/or (ii) relate to the purchase, acquisition or holding of any of the WMI Class Securities (listed on page one), 5.50% notes due August 24, 2011 offered in WMI's August 2006 offering or Series K perpetual non-cumulative floating rate preferred stock.<sup>12</sup>

**"Settled Claims"** means: any and all claims, rights, demands, liabilities, or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), to the fullest extent that the law permits their release in this Action (or, with respect to D&O/WMI Settlement, in the Chapter 11 Cases), by or on behalf of Lead Plaintiff or any other Class Members against any of the Released Defendant Parties that have been alleged or could have been alleged in the Action (or, with respect to the D&O/WMI Settlement, in the Chapter 11 Cases, including without limitation, the Bankruptcy Claims) whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether known claims or Unknown Claims, whether class or individual in nature, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, whether at law or in equity, matured or unmatured, that (i) are based on, relate to or arise out of the allegations, transactions, facts, matters, events, disclosures, statements, occurrences, representations, acts or omissions or failures to act that have been or could have been alleged in the Action (or, with respect to the D&O/WMI Settlement, in the Chapter 11 Cases with respect to the Bankruptcy Claims or otherwise) and/or (ii) relate to or arise out of Lead Plaintiff's or any other Class Member's purchase, acquisition or holding of WMI Released Securities during the Class Period insofar as it relates in any way to any other matter covered in this definition of Settled Claims.<sup>13</sup>

**"Unknown Claims"** means any Settled Claims which Lead Plaintiff or other Class Members do not know or suspect to exist in his, her or its favor at the time of the release of the Released Defendant Parties, and any Released Defendant Parties' Claims which any Released Defendant

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<sup>12</sup> The 5.50% notes due August 24, 2011 offered in WMI's August 2006 offering (CUSIP 939322AX1) ("5.50% Notes") and Series K perpetual non-cumulative preferred stock offered in WMI's September 2006 offering (CUSIP 939322830) ("Series K Stock") are not WMI Class Securities, however, if you are a Class Member and purchased those securities, then, as part of the Settlements, you will also be releasing the Settled Claims with respect to those securities. If you are not a Class Member, your claims with respect to these securities are not affected.

<sup>13</sup> Settled Claims, generally, do not include, release, bar, waive, impair or otherwise impact (i) any claims to enforce the Settlement; (ii) any claims of the Class or any Class Member against any of the Other Defendants; (iii) the rights of any Class Members to recover moneys from the settlement of the action styled *In re Washington Mutual Inc. ERISA Litig.*, Lead Case No. 07-cv-1874; (iv) any claims asserted in the actions styled: *In re Washington Mutual, Inc. California Securities Litigation*, No. 09-664 (W.D. Wash.), *Flaherty & Crumrine Preferred Income Fund Incorporated, et al. v. Killinger, et al.*, No. C09-1756 MJP (W.D. Wash.), *Boilermakers National Annuity Trust Fund v. WaMu Mortgage Pass-Through Certificates et al.*, 09-37 (W.D. Wash.), and *Allstate Bank, et al. v. JPMorgan Chase Bank, NA, et al.*, Index No. 650398/2011 (N.Y. Supreme); (v) any claim or right to recovery of any Class Member individually in the Chapter 11 Cases based solely upon his, her or its status as a holder or beneficial owner of a WMI debt or equity security with respect to their rights to participate in the distribution of funds in the Chapter 11 Cases upon confirmation of a plan of reorganization or otherwise solely to the extent that such distribution is being made on account of such debt or equity security; or (vi) Lead Plaintiff's and each other Class Member's right to participate in the distribution of any funds recovered from any of the Defendants by any governmental or regulatory agency.



Party does not know or suspect to exist in his, her, or its favor at the time of the release of Lead Plaintiff, Plaintiffs' Counsel, the other Class Members and their respective attorneys, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Settled Claims and Released Defendant Parties' Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and each of the Settling Defendants shall expressly waive, and each of the other Class Members and each of the other Released Defendant Parties shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff and each of the Settling Defendants acknowledge, and each of the other Class Members and each of the other Released Defendant Parties shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for as a key element of the Settlement.

**“Released Defendant Parties”** means as to the respective Settlements:

**The D&O/WMI Settlement:** any and all of the Individual Defendants and WMI pursuant to that Settlement and each of their respective Related Parties, i.e., (i) with respect to each Individual Defendant, his or her assigns, attorneys, advisors (other than the Underwriter Defendants), representatives, members of his or her Immediate Family, heirs, executors, estates, administrators, insurers, including, without limitation the Contributing Insurers and reinsurers, (ii) with respect to WMI, its predecessors, successors, past, present or future parents, subsidiaries, affiliates, and each of their respective past or present officers, directors, agents, partners, principals, members, employees, attorneys, advisors (other than the Underwriter Defendants), auditors and accountants (other than Deloitte), insurers, including, without limitation, the Contributing Insurers, and reinsurers,; (iii) with respect to all Individual Defendants and WMI, any firm, trust, corporation, or other entity in which any of them has or had a controlling interest.

**The Underwriters Settlement:** any and all of the Underwriter Defendants, BOA and each of their respective Related Parties, i.e., with respect to each Underwriter Defendant and BOA, its predecessors, successors, past, present or future parents, subsidiaries, affiliates, and each of their respective past or present officers, directors, shareholders, agents, partners, principals, members, employees, attorneys, advisors, auditors and accountants (other than Deloitte), insurers and reinsurers, and any firm, trust, corporation, or other entity in which any of the Underwriter Defendants or BOA has or had a controlling interest.

**The Deloitte Settlement:** Deloitte and each of its Related Parties, i.e., as to Deloitte & Touche LLP, Deloitte LLP, Deloitte Consulting LLP, Deloitte Financial Advisory Services LLP, Deloitte Tax LLP, Deloitte Services LP, all of their and Deloitte & Touche LLP's respective past, present and future parent companies, subsidiaries, affiliates, divisions, joint venturers, subcontractors, agents, attorneys, insurers, subrogees, co-insurers and reinsurers,

and each of their respective past and present officers, directors, employees, members, partners, principals, shareholders and owners.

Notwithstanding the foregoing, as to each individual Settlement, the Related Parties do not include any of the Defendants who are parties to one of the other Settlements or any person or entity that would be a Related Party of one of those Other Defendant parties as defined in the applicable Stipulation. Thus, if any of the Settlements is not approved, a person or entity who or which is a "Settling Defendant" or a "Related Party" pursuant to the terms of that Settlement will not be released.

74. The Judgments will also provide that, upon the Effective Date of each Settlement, each of the applicable Settling Defendants and each of the other applicable Released Defendant Parties, on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors and assigns, shall be deemed by operation of law to have released, waived, discharged and dismissed any and all claims, rights, demands, liabilities or causes of action of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or in this or any other forum against Lead Plaintiff, Plaintiffs' Counsel, any other Class Member or any of their respective attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlements), and shall forever be enjoined from prosecuting any such claims against Lead Plaintiff, Plaintiffs' Counsel, every other Class Member and each of their respective attorneys.

75. In addition, each of the Judgments will provide for a "Bar Order" that will bar certain claims for contribution or other related claims by or against the Settling Defendants or the other Released Defendant Parties. The specific terms of the Bar Orders that will be sought are set forth in the respective Stipulations. Each Judgment will further provide that if the Class or any Class Member later obtains a judgment against a person subject to the Bar Order, such judgment shall be reduced by the greater of an amount that corresponds to the percentage of responsibility of the Settling Defendants for common damages or the amount paid by or on behalf of the Settling Defendants to the Class or Class Member for common damages.

**WILL THE SETTLEMENTS AFFECT ANY INDIVIDUAL CLAIM THAT  
I MIGHT HAVE IN THE CHAPTER 11 CASES?**

76. The Settlements will affect only the Settled Claims, including the Bankruptcy Claims filed in the Chapter 11 Cases. The Settlements shall not in any way release, impair or otherwise impact any claim or right to recovery of any Class Member individually in the Chapter 11 Cases based solely upon his, her or its status as a holder or beneficial owner of a WMI debt or equity security with respect to the rights to participate in the distribution of funds in the Chapter 11 Cases upon confirmation of a plan of reorganization or otherwise solely to the extent that such distribution is being made on account of such debt or equity security in addition to any recovery that they may be entitled to receive under these Settlements.

WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING?  
HOW WILL THE LAWYERS BE PAID?

77. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the Settling Defendants on behalf of the Class, nor have they been reimbursed for their out-of-pocket expenses. Before final approval of the Settlements, Lead Counsel will apply to the Court for an award of attorneys' fees on behalf of all Plaintiffs' Counsel in the amount of 22.5% of each of the Settlement Funds. At the same time, Lead Counsel also intend to apply for reimbursement of Litigation Expenses to be paid proportionately from the Settlement Funds in an amount not to exceed \$5.8 million (which may include an application for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Class). Should the Court approve less than all the Settlements, attorneys' fees will be paid only with respect to the Settlements that are approved and the Litigation Expenses approved by the Court will be paid proportionately from the Settlement Funds created by the approved Settlements.

HOW DO I PARTICIPATE IN THE SETTLEMENTS? WHAT DO I NEED TO DO?

78. To be eligible for a payment from the proceeds of the Settlements, you must be a member of the Class and you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than \_\_\_\_\_, 2011**. A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlements, [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com), or from Lead Counsel's website, [www.blbglaw.com](http://www.blbglaw.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-888-588-3788. If you request exclusion from the Class or do not submit a timely and valid Claim Form, you will not be eligible to share in any of the Net Settlement Funds. Please retain all records of your ownership of and transactions in WMI Class Securities, as they may be needed to document your Claim.

79. As a Class Member you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlements," below.

80. If you are a Class Member and do not wish to remain a Class Member, you may exclude yourself from the Class by following the instructions in the section entitled, "What If I Do Not Want to Participate in the Settlements? How Do I Exclude Myself?," below.

81. If you are a Class Member and you wish to object to any of the Settlements, to the Plan of Allocation, or to Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, and if you do not exclude yourself from the Class, you may present your objections by following the instructions in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlements?," below.

WHAT IF I DO NOT WANT TO PARTICIPATE IN THE SETTLEMENTS?  
HOW DO I EXCLUDE MYSELF?

82. Each Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Class, addressed to *In re Washington Mutual, Inc. Securities Litigation, EXCLUSIONS*, c/o The Garden City Group, Inc., P.O. Box 91310, Seattle, WA 98111-9410. The exclusion request must be *received* no later than \_\_\_\_\_, 2011. You will not be able to exclude yourself from the Class after that date. Each Request for Exclusion must (a) state the name, address and telephone number of the person or entity requesting exclusion; (b) state that such person or entity “requests exclusion from the Class in *In re Washington Mutual, Inc. Securities Litigation*, No. 2:08-md-1919 MJP, Lead Case No. C08-387 MJP”; (c) state the number of each WMI Class Security (in terms of shares, notes or units) that the person or entity requesting exclusion purchased and/or sold during the Class Period, as well as the dates and prices of each such purchase and sale; (d) state whether the person or entity requesting exclusion sold or disposed of any: WMI common stock between July 23, 2008 and October 20, 2008, inclusive; units of Capital Trust Unit Preferred between July 23, 2008 and October 21, 2008, inclusive; and/or Floating Rate Notes, 7.250% Notes or Series R Preferred Stock on or after July 23, 2008, and if so, state the number of shares, units or notes sold, the date(s) of such sale(s) and the amount of money received for each such sale; and (e) be signed by such person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

83. If you do not want to be part of the Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Settled Claim against any of the Released Defendant Parties.

84. If you ask to be excluded from the Class, you will not be eligible to receive any payment out of any of the Net Settlement Funds, or any other benefit provided for in the Stipulations.

85. The Settling Defendants have the right to terminate their respective Settlements if valid requests for exclusion are received from persons and entities entitled to be members of the Class in an amount that exceeds an amount agreed to by Lead Plaintiff and the applicable Settling Defendants.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE  
SETTLEMENTS?  
DO I HAVE TO COME TO THE HEARING?  
MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENTS?

86. **Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if the Class Member does not attend the hearing. You can participate in the Settlements without attending the Settlement Hearing.**

87. The Settlement Hearing will be held on \_\_\_\_\_, 2011 at \_\_\_\_\_.m. before the Honorable Marsha J. Pechman, at the United States District Court for the Western District of Washington, United States Courthouse, 700 Stewart Street, Seattle, WA 98101. The Court reserves the right to approve the Settlements at or after the Settlement Hearing without further notice to the members of the Class.

88. Any Class Member who does not request exclusion may object to one or more of the Settlements, the proposed Plan of Allocation or Lead Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Western District of Washington at the address set forth below on or before \_\_\_\_\_, 2011. You must also serve the papers on Lead Counsel for the Class and on counsel for the relevant Settling Defendants at the addresses set forth below for their respective counsel so that the papers are **received on or before** \_\_\_\_\_, 2011.

**Clerk's Office**

United States District Court for the  
Western District of Washington  
Clerk of the Court  
United States Courthouse  
700 Stewart Street  
Seattle, WA 98101

**Lead Counsel for the Class**

Hannah G. Ross, Esq.  
Bernstein Litowitz Berger  
& Grossmann LLP  
1285 Avenue of the Americas  
New York, NY 10019

**Representative Counsel for the  
Individual Defendants**

Ronald L. Berenstein, Esq.  
Perkins Coie LLP  
1201 Third Avenue  
Suite 4800  
Seattle Washington, 98101-3099

**Counsel for the  
Underwriter Defendants**

Jonathan C. Dickey, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166

**Counsel for  
Deloitte & Touche LLP**

Peter A. Wald, Esq.  
Latham & Watkins LLP  
505 Montgomery Street  
San Francisco, CA 94111

89. Any objection to any of the Settlements (a) must contain a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; and (b) must include documents sufficient to prove the number (in terms of shares, notes or units) of each WMI Class Security that the objecting Class Member purchased and sold during the Class Period, as well as the dates and prices of each such purchase and/or sale, and with respect to WMI common stock sold between July 23, 2008 and October 20, 2008 inclusive, Capital Trust Unit Preferred sold between July 23, 2008 and October 21, 2008 inclusive, and Floating Rate Notes, 7.250% Notes or Series R Preferred Stock sold on or after July 23, 2008, state the number of shares, units or notes sold, the date(s) of such sale(s) and the amount of money received for each such sale. You may not object to any of the Settlements, the Plan of Allocation or the motion for attorneys' fees and reimbursement of expenses if you excluded yourself from the Class or if you are not a member of the Class.

90. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first filed and

served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

91. If you wish to be heard orally at the hearing in opposition to the approval of any of the Settlements, the Plan of Allocation or Lead Counsel's request for an award of attorneys' fees and reimbursement of expenses, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and counsel for the Settling Defendants at the addresses set forth above so that it is *received* on or before \_\_\_\_\_, 2011. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

92. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. If you decide to hire an attorney, which will be at your own expense, however, he or she must file a notice of appearance with the Court and serve it on Lead Counsel and Counsel for the Settling Defendants at the set forth addresses above so that the notice is *received* on or before \_\_\_\_\_, 2011.

93. The Settlement Hearing may be adjourned by the Court without further written notice to the Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Lead Counsel.

**Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlements, the proposed Plan of Allocation or Lead Counsel's request for an award of attorneys' fees and reimbursement of expenses. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

94. If you purchased or otherwise acquired any of the WMI Class Securities (listed on page 1 of this Notice) during the Class Period for the beneficial interest of persons or organizations other than yourself, you must either (a) send a copy of this Notice and the enclosed Claim Form to the beneficial owners of such securities, postmarked no later than fourteen (14) days after you receive this Notice, or (b) provide the names and addresses of such persons or entities no later than fourteen (14) days after you receive this Notice to *In re Washington Mutual, Inc. Securities Litigation*, c/o The Garden City Group, Inc., P.O. Box 91310, Seattle, WA 98111-9410. If you choose the second option, the Claims Administrator will send a copy of the Notice and the Claim Form to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form can be obtained from the website maintained by the Claims Administrator, [www.blbgclaw.com](http://www.blbgclaw.com), by calling the Claims Administrator toll-free at 1-888-588-3788, or from Lead Counsel's website, [www.blbgclaw.com](http://www.blbgclaw.com).



CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

95. This Notice contains only a summary of the terms of the proposed Settlements. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulations, which may be inspected during regular office hours at the Office of the Clerk, United States District Court, Western District of New York, United States Courthouse, 700 Stewart Street, Seattle, WA 98101. Additionally, copies of the Stipulations and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com). All inquiries concerning this Notice should be directed to:

*In re Washington Mutual, Inc. Securities Litigation*  
c/o The Garden City Group, Inc.  
P.O. Box 91310  
Seattle, WA 98111-3788  
(888) 588-3788  
[www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com)  
and/or

Hannah G. Ross, Esq.  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019  
(800) 380-8496  
[blbg@blbglaw.com](mailto:blbg@blbglaw.com)

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF THE COURT  
REGARDING THIS NOTICE.**

Dated: \_\_\_\_\_, 2011

By Order of the Clerk of the Court  
United States District Court  
Western District of Washington

#551346.10

**TABLE A**  
**Washington Mutual Inc.**  
**WaMu Securities Inflation per share by Period**

<b>Period</b>	<b>Inflation Per Share</b>	
	<b>Common Stock</b>	<b>Capital Unit Trust</b>
October 19, 2005 to October 17, 2007	\$5.80	\$5.06
October 18, 2007 to November 1, 2007	\$4.87	\$4.15
November 2, 2007 to November 6, 2007	\$4.54	\$4.06
November 7, 2007 to December 10, 2007	\$2.83	\$3.22
December 11, 2007 to December 20, 2007	\$2.38	\$3.74
December 21, 2007 to March 6, 2008	\$1.57	\$1.71
March 7, 2008 to July 22, 2008	\$0.97	\$0.79
July 23, 2008 Onwards	\$0.00	\$0.00



**TABLE B**  
**Washington Mutual Inc.**  
**Common Stock Average 90 Day Lookback Price**

<b>Date</b>	<b>Closing Price</b>	<b>Average Closing Price</b>
7/23/2008	\$4.64	\$4.64
7/24/2008	\$4.02	\$4.33
7/25/2008	\$3.83	\$4.16
7/28/2008	\$3.94	\$4.11
7/29/2008	\$4.43	\$4.17
7/30/2008	\$4.74	\$4.27
7/31/2008	\$5.33	\$4.42
8/1/2008	\$5.32	\$4.53
8/4/2008	\$4.87	\$4.57
8/5/2008	\$5.22	\$4.63
8/6/2008	\$5.30	\$4.69
8/7/2008	\$4.97	\$4.72
8/8/2008	\$4.58	\$4.71
8/11/2008	\$4.74	\$4.71
8/12/2008	\$4.30	\$4.68
8/13/2008	\$4.12	\$4.65
8/14/2008	\$4.36	\$4.63
8/15/2008	\$4.55	\$4.63
8/18/2008	\$4.21	\$4.60
8/19/2008	\$4.10	\$4.58
8/20/2008	\$4.10	\$4.56
8/21/2008	\$3.90	\$4.53
8/22/2008	\$3.83	\$4.50
8/25/2008	\$3.60	\$4.46
8/26/2008	\$3.59	\$4.42
8/27/2008	\$3.53	\$4.39
8/28/2008	\$3.87	\$4.37
8/29/2008	\$4.05	\$4.36
9/2/2008	\$4.24	\$4.35
9/3/2008	\$4.40	\$4.36
9/4/2008	\$4.04	\$4.35
9/5/2008	\$4.27	\$4.34
9/8/2008	\$4.12	\$4.34
9/9/2008	\$3.30	\$4.31
9/10/2008	\$2.32	\$4.25
9/11/2008	\$2.83	\$4.21
9/12/2008	\$2.73	\$4.17

9/15/2008	\$2.00	\$4.11
9/16/2008	\$2.32	\$4.07
9/17/2008	\$2.01	\$4.02
9/18/2008	\$2.99	\$3.99
9/19/2008	\$4.25	\$4.00
9/22/2008	\$3.33	\$3.98
9/23/2008	\$3.20	\$3.96
9/24/2008	\$2.26	\$3.93
9/25/2008	\$1.69	\$3.88
9/26/2008	\$0.16	\$3.80
9/29/2008	\$0.03	\$3.72
9/30/2008	\$0.08	\$3.65
10/1/2008	\$0.14	\$3.58
10/2/2008	\$0.12	\$3.51
10/3/2008	\$0.16	\$3.44
10/6/2008	\$0.14	\$3.38
10/7/2008	\$0.11	\$3.32
10/8/2008	\$0.11	\$3.26
10/9/2008	\$0.09	\$3.20
10/10/2008	\$0.08	\$3.15
10/13/2008	\$0.09	\$3.10
10/14/2008	\$0.10	\$3.05
10/15/2008	\$0.10	\$3.00
10/16/2008	\$0.10	\$2.95
10/17/2008	\$0.09	\$2.90
10/20/2008	\$0.08	\$2.86

**TABLE C**  
**Washington Mutual Inc.**  
**Capital Unit Trust Average 90 Day Lookback Price**

<b>Date</b>	<b>Closing Price</b>	<b>Average Closing Price</b>
7/24/2008	\$18.25	\$18.25
7/25/2008	\$18.00	\$18.13
7/28/2008	\$19.00	\$18.42
7/29/2008	\$19.00	\$18.56
7/30/2008	\$20.32	\$18.91
7/31/2008	\$23.50	\$19.68
8/1/2008	\$21.50	\$19.94
8/4/2008	\$22.00	\$20.20
8/5/2008	\$21.20	\$20.31
8/6/2008	\$21.50	\$20.43
8/7/2008	\$20.93	\$20.47
8/8/2008	\$21.85	\$20.59
8/11/2008	\$20.72	\$20.60
8/12/2008	\$20.62	\$20.60
8/13/2008	\$19.38	\$20.52
8/14/2008	\$19.38	\$20.45
8/15/2008	\$20.50	\$20.45
8/18/2008	\$19.85	\$20.42
8/19/2008	\$19.00	\$20.34
8/20/2008	\$18.50	\$20.25
8/21/2008	\$18.10	\$20.15
8/22/2008	\$18.30	\$20.06
8/25/2008	\$18.20	\$19.98
8/26/2008	\$18.00	\$19.90
8/27/2008	\$17.50	\$19.80
8/28/2008	\$17.90	\$19.73
8/29/2008	\$18.60	\$19.69
9/2/2008	\$18.50	\$19.65
9/3/2008	\$18.70	\$19.61
9/4/2008	\$18.40	\$19.57
9/5/2008	\$17.75	\$19.51
9/8/2008	\$18.00	\$19.47
9/9/2008	\$16.00	\$19.36
9/10/2008	\$13.00	\$19.17
9/11/2008	\$14.00	\$19.03
9/12/2008	\$16.75	\$18.96
9/15/2008	\$13.00	\$18.80

9/16/2008	\$10.25	\$18.58
9/17/2008	\$10.50	\$18.37
9/18/2008	\$15.00	\$18.29
9/19/2008	\$18.00	\$18.28
9/22/2008	\$16.50	\$18.24
9/23/2008	\$13.40	\$18.12
9/24/2008	\$11.05	\$17.96
9/25/2008	\$6.00	\$17.70
9/26/2008	\$0.02	\$17.31
9/29/2008	\$0.70	\$16.96
9/30/2008	\$0.40	\$16.61
10/1/2008	\$1.05	\$16.30
10/2/2008	\$1.10	\$15.99
10/3/2008	\$1.75	\$15.71
10/6/2008	\$2.01	\$15.45
10/7/2008	\$1.95	\$15.20
10/8/2008	\$1.90	\$14.95
10/9/2008	\$1.80	\$14.71
10/10/2008	\$1.75	\$14.48
10/13/2008	\$1.66	\$14.25
10/14/2008	\$1.80	\$14.04
10/15/2008	\$1.50	\$13.83
10/16/2008	\$1.50	\$13.62
10/17/2008	\$1.60	\$13.42
10/20/2008	\$1.60	\$13.23
10/21/2008	\$1.10	\$13.04

# **Exhibit A-2**

EXHIBIT A-2

Must Be Postmarked No  
Later Than  
\_\_\_\_\_, 2011

In re Washington Mutual, Inc. Securities Litigation  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 91310  
Seattle, WA 98111-9410  
(Toll-free number) 1-888-588-3788  
[www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com)

## **PROOF OF CLAIM AND RELEASE**

***THIS PROOF OF CLAIM MUST BE MAILED TO THE ADDRESS ABOVE  
AND POSTMARKED NO LATER THAN \_\_\_\_\_, 2011.***

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#### **PART IV – RELEASE OF CLAIMS AND SIGNATURE**

**PART I – CLAIMANT INFORMATION**

LAST NAME (CLAIMANT)

FIRST NAME (CLAIMANT)

Last Name (Beneficial Owner if Different From Claimant)

First Name (Beneficial Owner)

Last Name (Co-Beneficial Owner)

First Name (Co-Beneficial Owner)

Company/Other Entity (If Claimant Is Not an Individual)

Contact Person (if Claimant is Not an Individual)

Trustee/Nominee/Other

Account Number (If Claimant Is Not an Individual)

Trust/Other Date (If Applicable)

Address Line 1

Address Line 2 (If Applicable)

City

State

Zip Code

Foreign Province

Foreign Country

Foreign Zip Code

Telephone Number (Day)

Telephone Number (Night)

Beneficial Owner's Employer Identification Number or Social Security Number <sup>1</sup>Email Address *(Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.)***Are you or were you an affiliate of or related to TPG Capital?**Yes [ ☐ ] No [ ☐ ] (check one)**Did you or someone on your behalf exercise both distinct rights (including the appointment of a member to the WMI Board of Directors) and diligence opportunities in connection with the TPG Capital Deal? Yes [ ☐ ] No [ ☐ ] (check one)**

<sup>1</sup> The taxpayer identification number (TIN), consisting of a valid Social Security number (SSN) for individuals or employer identification number (EIN) for business entities, trusts, estates, etc., and telephone number of the beneficial owner(s) may be used in verifying this claim.

IDENTITY OF CLAIMANT (check only one box)

- ☐ Individual ☐ Joint Owners ☐ Estate ☐ Corporation ☐ Trust ☐ Partnership ☐ Private Pension Fund  
☐ IRA, Keogh, or other type of individual retirement plan (indicate type of plan, mailing address, and name of current custodian) ☐ Legal Representative ☐ Other (specify, describe on separate sheet)

**PART II – GENERAL INSTRUCTIONS**

- A. It is important that you completely read and understand the Notice of (I) Pendency of Class Action and Proposed Settlements, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Notice") that accompanies this Proof of Claim and Release form ("Claim Form"), including the Plan of Allocation of the Net Settlement Funds set forth in the Notice. The Notice describes the proposed Settlements, how Class Members are affected by the Settlements, and the manner in which the Net Settlement Funds will be distributed if the Settlements and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the releases described therein and provided for herein.
- B. TO BE ELIGIBLE TO RECEIVE A DISTRIBUTION IN THE SETTLEMENTS, YOU MUST MAIL YOUR COMPLETED AND SIGNED CLAIM FORM TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, POSTAGE PREPAID, **POSTMARKED BY \_\_\_\_\_, 2011**, ADDRESSED AS FOLLOWS:

*In re Washington Mutual, Inc. Securities Litigation*  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 91310  
Seattle, WA 98111-9410

If you fail to file a timely, properly addressed, and completed Claim Form, your claim may be rejected and you may be precluded from receiving any proceeds from the Settlements.

- C. This Proof of Claim is directed to all persons and/or entities who, from October 19, 2005 to July 23, 2008 (the "Class Period"), purchased or otherwise acquired any of the following securities issued by Washington Mutual, Inc. ("WMI" or the "Company") and its subsidiaries: (i) WMI common stock (CUSIP 939322103); (ii) Floating Rate Notes due August 24, 2009, offered in WMI's August 2006 Offering (CUSIP 939322AW3) ("Floating Rate Notes"); (iii) 7.250% Subordinated Notes due November 1, 2017, offered in WMI's October 2007 Offering (CUSIP 939322AY9) ("7.25% Notes"); (iv) 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock, offered in WMI's December 2007 Offering (CUSIP 939322814) ("Series R Stock"); or (v) Washington Mutual Capital Trust 2001's 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS) Units, maturing 7/1/2041 (CUSIP 939322848) ("Capital Trust Unit Preferred") (collectively, the "WMI Class Securities"), and were damaged thereby (the "Class").
- D. "Class Members" means any persons and entities who purchased or otherwise acquired WMI Class Securities during the Class Period and who were damaged thereby and who are not excluded by



definition from the Class and do not timely submit a proper request for exclusion in accordance with the requirements set forth in the Notice. Persons and entities excluded from the Class by definition are (i) Defendants; (ii) members of the Immediate Family of each Individual Defendant; (iii) any other person who was an officer or director of WMI, Deloitte, any of the Underwriter Defendants, Lehman, or BOA during the Class Period; (iv) any firm, trust, corporation, or other entity in which any Defendant has or had a controlling interest; (v) any person who participated in the wrongdoing alleged in the Action; (vi) TPG Capital and other purchasers of equity securities issued by WMI in connection with the \$7 billion capital issuance pursuant to the agreements entered into by and among TPG Capital and WMI and other investors, announced by the Company on April 8, 2008 (the “TPG Deal”), to the extent that such purchasers exercised distinct rights and diligence opportunities afforded them in connection with the TPG Deal; and (vii) the legal representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any such excluded party, provided that any Investment Vehicle (as defined in the Stipulations) shall not be deemed an excluded person or entity by definition.

- E. IF YOU ARE NOT A CLASS MEMBER, OR IF YOU FILED A REQUEST FOR EXCLUSION FROM THE CLASS, DO NOT SUBMIT A CLAIM FORM. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENTS IF YOU ARE NOT A CLASS MEMBER OR IF YOU SUBMIT A VALID AND TIMELY REQUEST FOR EXCLUSION.
- F. Class Members will be bound by the terms of any judgments or orders entered in the Action WHETHER OR NOT A CLAIM FORM IS SUBMITTED, unless a valid request for exclusion from the Class is received by \_\_\_\_\_, 2011. As described in the Notice, the Judgments will release and enjoin the filing or continued prosecution of the Settled Claims against the Released Defendant Parties.
- G. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlements.** Distribution of the Net Settlement Funds will be governed by the Plan of Allocation set forth in the Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.
- H. Use Section III of this Claim Form entitled “SCHEDULE OF TRANSACTIONS IN WMI CLASS SECURITIES” to supply all required details of your transaction(s) in the WMI Class Securities. On these schedules, provide all of the requested information with respect to (i) your position in WMI Common Stock and Capital Trust Unit Preferred as of the close of trading on October 18, 2005, the day before the Class Period begins; (ii) all transactions in WMI Class Securities, including all purchases or other acquisitions (including free receipts) and all sales (including free deliveries), made from October 19, 2005 through and including October 20, 2008 (for Common Stock), from October 19, 2005 through and including October 21, 2008 (for Capital Trust Unit Preferred) and from October 19, 2005 through and including [May 13], 2011 (for Series R Stock, Floating Rate Notes, and 7.250% Notes); and (iii) your closing positions in Common Stock and Capital Trust Unit Preferred as of the close of trading on October 20, 2008 and October 21, 2008, respectively; and your closing position in Series R Stock, Floating Rate Notes, and 7.250% Notes as of the close of trading on [May 13], 2011. **Failure to report all transactions during the requested periods may result in the rejection of your claim.**
- I. You are required to submit genuine and sufficient documentation for all your transactions in and holdings of WMI Class Securities as set forth in the Schedule of Transactions in Part III. Documentation may consist of copies of brokerage confirmations or monthly statements. IF SUCH

DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OR EQUIVALENT CONTEMPORANEOUS DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. **Please keep a copy of all documents that you send to the Claims Administrator.**

- J. Participants and beneficiaries in the WaMu Savings Plan should not include any information relating to their transactions within the plan in any Claim Form that they may submit in this Action. Claims based on the WaMu Savings Plan's purchases of WMI Class Securities during the Class Period may be made by the plan's trustees. To the extent any of the Defendants or any of the other persons or entities excluded from the Class are participants in the plan, such persons or entities shall not receive, either directly or indirectly, any portion of the recovery that may be obtained from these Settlements by the WaMu Savings Plan.
- K. Separate Claim Forms should be submitted for each separate legal entity (e.g., a claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual's name). Conversely, a single Claim Form should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (e.g., a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).
- L. All joint beneficial owners must each sign this Claim Form. If you purchased or acquired WMI Class Securities during the Class Period and held the securities in your name, you are the beneficial owner as well as the record owner. If, however, you purchased or acquired WMI Class Securities during the Class Period and the securities were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of these securities, but the third party is the record owner.
- M. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:
  - (a) expressly state the capacity in which they are acting;
  - (b) identify the name, account number, Social Security Number (or taxpayer identification number), address and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the WMI Class Securities; and
  - (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade stock in another person's accounts.)
- N. By submitting a signed Claim Form, you will be swearing that you:
  - (a) own(ed) the WMI Class Securities you have listed in the Claim Form; or
  - (b) are expressly authorized to act on behalf of the owner thereof.

- O.** By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.
- P. NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the settlement website at [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com) or you may email the Claims Administrator's electronic filing department at [eClaim@gcginc.com](mailto:eClaim@gcginc.com). Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email after processing your file with your claim numbers and respective account information. Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at [eClaim@gcginc.com](mailto:eClaim@gcginc.com) to inquire about your file and confirm it was received and acceptable.
- Q.** If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, The Garden City Group, Inc., at the above address or by toll-free phone at 1-888-588-3788, or you may download the documents from [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com).

**PART III – SCHEDULE OF TRANSACTIONS IN WMI CLASS SECURITIES**

Failure to provide proof of all beginning holdings, purchases or acquisitions, sales, and ending holdings information requested below will impede proper processing of your claim and may result in rejection of your claim. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph I, above.

**A. COMMON STOCK** (CUSIP No. 939322103):

<b>1. Beginning Holdings</b> – State the number of shares of WMI common stock you held as of the close of trading on <b>October 18, 2005</b> . If none, write “zero” or “0”.		_____ shares	Proof of holding enclosed <input type="radio"/> Y <input type="radio"/> N
<b>2. Purchases/Acquisitions</b> – Separately list each and every purchase and/or acquisition, including free receipts, of WMI common stock during the period <b>October 19, 2005</b> through and including the close of trading on <b>October 20, 2008</b> . <sup>2</sup>		<b>IF NONE, CHECK HERE</b> <input type="radio"/>	
Date(s) of purchase or acquisition (List chronologically) MM DD YYYY	Number of shares purchased/acquired	Purchase price per share (excluding taxes, commissions and fees)	Proof of purchase enclosed
/ /		\$	<input type="radio"/> Y <input type="radio"/> N
/ /		\$	<input type="radio"/> Y <input type="radio"/> N
/ /		\$	<input type="radio"/> Y <input type="radio"/> N
/ /		\$	<input type="radio"/> Y <input type="radio"/> N
<b>3. Sales</b> – Separately list each and every sale, including free deliveries, of WMI common stock during the period <b>October 19, 2005</b> through and including the close of trading on <b>October 20, 2008</b> .		<b>IF NONE, CHECK HERE</b> <input type="radio"/>	
Date(s) of sales (List chronologically) MM DD YYYY	Number of shares sold	Sale price per share (excluding taxes, commissions and fees)	Proof of sale enclosed
/ /		\$	<input type="radio"/> Y <input type="radio"/> N
/ /		\$	<input type="radio"/> Y <input type="radio"/> N
/ /		\$	<input type="radio"/> Y <input type="radio"/> N
/ /		\$	<input type="radio"/> Y <input type="radio"/> N
<b>4. Ending Holdings</b> – State the number of shares of WMI common stock you held as of the close of trading on <b>October 20, 2008</b> . If none, write “zero” or “0”.		_____ shares	Proof of holding enclosed <input type="radio"/> Y <input type="radio"/> N

<sup>2</sup> **Please note:** Information requested with respect to your purchases/acquisitions of WMI common stock from July 23, 2008 through and including October 20, 2008 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible under the Settlements and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

**B. CAPITAL TRUST UNIT PREFERRED** (CUSIP No. 939322848):

<b>1. Beginning Holdings</b> – State the number of units of Washington Mutual Capital Trust 2001’s 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS) Units, maturing 7/1/2041 (“Capital Trust Unit Preferred”) you held as of the close of trading on <b>October 18, 2005</b> . If none, write “zero” or “0”.		_____ units	Proof of holding enclosed <input type="radio"/> Y <input type="radio"/> N
<b>2. Purchases</b> – Separately list each and every purchase and/or acquisition, including free receipts, of Capital Trust Unit Preferred during the period <b>October 19, 2005</b> through and including the close of trading on <b>October 21, 2008</b> . <sup>3</sup>		<b>IF NONE, CHECK HERE</b> <input type="radio"/>	
Date(s) of purchase or acquisition (List chronologically) MM    DD    YYYY	Number of units purchased/acquired	Purchase price per unit (excluding taxes, commissions and fees)	Proof of purchase enclosed
/    /		\$	<input type="radio"/> Y <input type="radio"/> N
/    /		\$	<input type="radio"/> Y <input type="radio"/> N
/    /		\$	<input type="radio"/> Y <input type="radio"/> N
/    /		\$	<input type="radio"/> Y <input type="radio"/> N
/    /		\$	<input type="radio"/> Y <input type="radio"/> N
<b>3. Sales</b> – Separately list each and every sale, including free deliveries, of Capital Trust Unit Preferred during the period <b>October 19, 2005</b> through and including the close of trading on <b>October 21, 2008</b> .		<b>IF NONE, CHECK HERE</b> <input type="radio"/>	
Date(s) of sales (List chronologically) MM    DD    YYYY	Number of units sold	Sale price per unit (excluding taxes, commissions and fees)	Proof of sale enclosed
/    /		\$	<input type="radio"/> Y <input type="radio"/> N
/    /		\$	<input type="radio"/> Y <input type="radio"/> N
/    /		\$	<input type="radio"/> Y <input type="radio"/> N
/    /		\$	<input type="radio"/> Y <input type="radio"/> N
/    /		\$	<input type="radio"/> Y <input type="radio"/> N
<b>4. Ending Holdings</b> – State the number of units of Capital Trust Unit Preferred you held as of the close of trading on <b>October 21, 2008</b> .		_____ units	Proof of holding enclosed <input type="radio"/> Y <input type="radio"/> N

<sup>3</sup> **Please note:** Information requested with respect to your purchases/acquisitions of Capital Trust Unit Preferred from July 23, 2008 through and including October 21, 2008 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible under the Settlements and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

**C. SERIES R STOCK** (CUSIP No. 939322814):

<b>1. Purchases</b> – Separately list each and every purchase and/or acquisition, including free receipts, of 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock, offered in WMI’s December 2007 Offering (“Series R Stock”) at any time prior to the close of trading on <b>[May 13], 2011.</b> <sup>4</sup>			<b>IF NONE, CHECK HERE</b> <input type="radio"/>	
Date(s) of purchase or acquisition (List chronologically) MM    DD    YYYY		Number of shares purchased/acquired	Purchase price per share (excluding taxes, commissions and fees)	Proof of purchase enclosed
/        /			\$	<input type="radio"/> Y <input type="radio"/> N
/        /			\$	<input type="radio"/> Y <input type="radio"/> N
/        /			\$	<input type="radio"/> Y <input type="radio"/> N
/        /			\$	<input type="radio"/> Y <input type="radio"/> N
/        /			\$	<input type="radio"/> Y <input type="radio"/> N
<b>2. Sales</b> – Separately list each and every sale, including free deliveries, of Series R Stock at any time prior to the close of trading on <b>[May 13], 2011.</b>			<b>IF NONE, CHECK HERE</b> <input type="radio"/>	
Date(s) of sales (List chronologically) MM    DD    YYYY		Number of shares sold	Sale price per share (excluding taxes, commissions and fees)	Proof of sale enclosed
/        /			\$	<input type="radio"/> Y <input type="radio"/> N
/        /			\$	<input type="radio"/> Y <input type="radio"/> N
/        /			\$	<input type="radio"/> Y <input type="radio"/> N
/        /			\$	<input type="radio"/> Y <input type="radio"/> N
/        /			\$	<input type="radio"/> Y <input type="radio"/> N
<b>3. Ending Holdings</b> – State the number of shares of Series R Stock you held as of the close of trading on <b>[May 13], 2011.</b> If none, write “zero” or “0”.			_____ shares	Proof of holding enclosed <input type="radio"/> Y <input type="radio"/> N

<sup>4</sup> **Please note:** Information requested with respect to your purchases/acquisitions of Series R Stock from July 23, 2008 through and including [May 13], 2011 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible under the Settlements and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

**D. FLOATING RATE NOTES** (CUSIP No. 939322AW3):

<b>1. Purchases/Acquisitions</b> – Separately list each and every purchase and/or acquisition, including free receipts, of Floating Rate Notes due August 24, 2009, offered in WMI’s August 2006 Offering (“Floating Rate Notes”) at any time prior to the close of trading on <b>[May 13], 2011.</b> <sup>5</sup>			<b>IF NONE, CHECK HERE</b> <input type="radio"/>	
Date(s) of purchase or acquisition (List chronologically) MM    DD    YYYY		Face value purchased/acquired	Purchase price per note (excluding taxes, commissions and fees)	Proof of purchase enclosed
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
<b>2. Sales</b> – Separately list each and every sale, including free deliveries, of Floating Rate Notes at any time prior to the close of trading on <b>[May 13], 2011.</b>			<b>IF NONE, CHECK HERE</b> <input type="radio"/>	
Date(s) of sales (List chronologically) MM    DD    YYYY		Face value sold	Sale price per note (excluding taxes, commissions and fees)	Proof of sale enclosed
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
<b>3. Ending Holdings</b> – State the face value of Floating Rate Notes you held as of the close of trading on <b>[May 13], 2011.</b> If none, write “zero” or “0”.			\$	Proof of holding enclosed <input type="radio"/> Y <input type="radio"/> N

<sup>5</sup> **Please note:** Information requested with respect to your purchases/acquisitions of Floating Rate Notes from July 23, 2008 through and including [May 13], 2011 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible under the Settlements and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

**E. 7.250% NOTES** (CUSIP No. 939322AY9):

<b>1. Purchases/Acquisitions</b> – Separately list each and every purchase and/or acquisition, including free receipts, of 7.250% Subordinated Notes due November 1, 2017, offered in WMI’s October 2007 Offering (“7.250% Notes”) at any time prior to the close of trading on <b>[May 13], 2011.</b> <sup>6</sup>			<b>IF NONE, CHECK HERE</b> <input type="radio"/>	
Date(s) of purchase or acquisition (List chronologically) MM    DD    YYYY		Face value purchased/acquired	Purchase price per note (excluding taxes, commissions and fees)	Proof of purchase enclosed
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
<b>2. Sales</b> – Separately list each and every sale, including free deliveries, of 7.250% Notes at any time prior to the close of trading on <b>[May 13], 2011.</b>			<b>IF NONE, CHECK HERE</b> <input type="radio"/>	
Date(s) of sales (List chronologically) MM    DD    YYYY		Face value sold	Sale price per note (excluding taxes, commissions and fees)	Proof of sale enclosed
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
/    /			\$	<input type="radio"/> Y <input type="radio"/> N
<b>3. Ending Holdings</b> – State the face value of 7.250% Notes you held as of the close of trading on <b>[May 13], 2011.</b> If none, write “zero” or “0”.			\$	Proof of holding enclosed <input type="radio"/> Y <input type="radio"/> N

**IF YOU REQUIRE ADDITIONAL SPACE FOR ANY OF THE SCHEDULES ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER’S FULL NAME AND TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX ☐**

<sup>6</sup> **Please note:** Information requested with respect to your purchases/acquisitions of 7.250% Notes from July 23, 2008 through and including [May 13], 2011 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible under the Settlements and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.



#### PART IV - RELEASE OF CLAIMS AND SIGNATURE

**YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE \_\_\_\_ OF THIS CLAIM FORM.**

I (we) hereby acknowledge that as of the Effective Date of the respective Settlements, pursuant to the terms set forth in the relevant Stipulation(s), I (we) shall have and be deemed to have released, waived, discharged and dismissed each and every Settled Claim (as defined in the applicable Stipulation(s)) as against all of the applicable Released Defendant Parties (as defined in the applicable Stipulation(s)), including, without limitation, the Bankruptcy Claims as against WMI (if applicable), and shall forever be enjoined from prosecuting any or all Settled Claims against any Released Defendant Parties, including, without limitation, the Bankruptcy Claims as against WMI (if applicable), with respect to those Settlements as to which the Effective Date has occurred.

#### V. CERTIFICATION

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represents the claimant(s) certifies, as follows:

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlements;
2. that the claimant(s) is a (are) Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Class;
3. that the claimant **has not** submitted a request for exclusion from the Class;
4. that I (we) own(ed) the WMI Class Securities identified in the Claim Form and have not assigned the claim against the Released Defendant Parties to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant has not submitted any other claim covering the same purchases, sales, or holdings of WMI Class Securities and knows of no other person having done so on his/her/its behalf;
6. that the claimant submits to the jurisdiction of the Court with respect to his/her/its claim and for purposes of enforcing the releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator or the Court may require;
8. that the claimant waives the right to trial by jury, to the extent it exists, and agrees to the Court's summary disposition of the determination of the validity or amount of the claim made by this Claim Form;
9. that I (we) acknowledge that the claimant will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
10. that the claimant is NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the claimant is exempt from backup withholding or (b) the claimant has not been notified by the IRS that he/she/it is subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the claimant that he/she/it is no longer subject to backup withholding. **If the IRS has notified the claimant that he, she or it is subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HERewith ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

---

Signature of claimant

Date

---

Print your name here

---

Signature of joint claimant, if any

Date

---

Print your name here

***If the claimant is other than an individual, or is not the person completing this form, the following also must be provided:***

---

Signature of person signing on behalf of claimant

Date

---

Print your name here

---

Capacity of person signing on behalf of claimant, if other than an individual, e.g., executor, president, custodian, etc.

THIS PROOF OF CLAIM MUST BE POSTMARKED NO LATER THAN \_\_\_\_\_, 2011, AND MUST BE MAILED TO:

In re Washington Mutual, Inc. Securities Litigation  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 91310  
Seattle, WA 98111-9410

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by \_\_\_\_\_, 2011 and if a postmark is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

**REMINDER CHECKLIST:**

1. Please sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Remember to attach only **copies** of acceptable supporting documentation.
3. Please do not highlight any portion of the Claim Form or any supporting documents.
4. Do not send original stock certificates or documentation. These items cannot be returned to you by the Claims Administrator.
5. Keep copies of the completed Claim Form and documentation for your own records.
6. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at 1-888-588-3788.
7. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, please send the Claims Administrator written notification of your new address. If you change your name, please inform the Claims Administrator.
8. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the above address or at 1-888-588-3788, or visit [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com).

#543087.9

# **Exhibit A-3**

**EXHIBIT A-3**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES LITIGATION,

No. 2:08-md-1919 MJP  
Lead Case No. C08-387 MJP

This Document Relates to: ALL ACTIONS

**SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED  
SETTLEMENTS, (II) SETTLEMENT FAIRNESS HEARING, AND (III) MOTION  
FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

**TO:** All persons and entities who purchased or acquired any of the following securities (the "WMI Class Securities") issued by Washington Mutual, Inc. ("WMI") or its subsidiaries during the period from October 19, 2005 to July 23, 2008 and were damaged thereby:

- WMI common stock (CUSIP 939322103);
- Floating Rate Notes due August 24, 2009, offered in August 2006 (CUSIP 939322AW3);
- 7.250% Subordinated Notes due November 1, 2017, offered in October 2007 (CUSIP 939322AY9);
- 7.75% Series R Non-Cumulative Perpetual Convertible Preferred Stock, offered in December 2007 (CUSIP 939322814); and
- Washington Mutual Capital Trust 2001's 5.375% Trust Preferred Income Equity Redeemable Securities (PIERS) Units, maturing July 1, 2041 (CUSIP 939322848)

**PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Western District of Washington, (i) that the above-captioned litigation (the "Action") has been certified as a class action on behalf of all persons and entities who purchased any WMI Class Securities from October 19, 2005 to July 23, 2008 and were damaged thereby (the "Class"), except for certain persons and entities who are excluded from the Class by definition as set forth in the Stipulations of Settlement in the Action; and (ii) that Lead Plaintiff in the Action has reached proposed settlements with the Individual Defendants for \$105 million in cash whereby WMI is also a Settling Defendant; with the Underwriter Defendants for \$85 million in cash; and with WMI's former auditor, Deloitte & Touche LLP for \$18.5 million in cash for a total settlement amount of \$208.5 million in cash, plus interest thereon if all the Settlements are approved by the Court (collectively, the "Settlements").

A hearing will be held on \_\_\_\_\_, 2011 at \_\_\_\_\_.m before the Honorable Marsha J. Pechman, at the United States District Court for the Western District of Washington, United States Courthouse, 700 Stewart Street, Seattle, Washington, to determine (i) whether the proposed Settlements should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against the Settling Defendants in the respective Settlements, and the releases specified and described in the respective Stipulations of Settlement should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Counsel's application for attorneys' fees and reimbursement of expenses should be approved.

**If you are a member of the Class, your rights will be affected by the pending Action and the Settlements, and you may be entitled to share in the Settlement Funds.** If you have not yet received the full printed Notice of (I) Pendency of Class Action and Proposed Settlements, (II) Settlement Fairness Hearing, and (III) Motion for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice"), and the Proof of Claim Form, you may obtain copies of these documents by contacting the Claims Administrator: *In re Washington Mutual, Inc. Securities Litigation*, c/o The Garden City Group, Inc., Claims Administrator, P.O. Box 91310, Seattle, WA 98111-9410, 1-888 588-3788. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, [www.WashingtonMutualSecuritiesLitigationSettlement.com](http://www.WashingtonMutualSecuritiesLitigationSettlement.com), or from Lead Counsel's website, [www.blbglaw.com](http://www.blbglaw.com).

If you are a Class Member, in order to be eligible to receive a payment under the proposed Settlements, **you must submit a Claim Form postmarked no later than \_\_\_\_\_, 2011.** If you are a Class Member and do not submit a proper Claim Form, you will not share in the distribution of the net proceeds of any of the Settlements but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a Class Member and wish to exclude yourself from the Class, you must submit a request for exclusion such that it is *received* no later than \_\_\_\_\_, 2011, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of any of the Settlements,

Any objections to the proposed Settlements, the proposed Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of expenses, must be filed with the Court and delivered to Lead Counsel and counsel for the Settling Defendants such that they are *received* no later than \_\_\_\_\_, 2011, in accordance with the instructions set forth in the Notice.

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE.** Inquiries, other than requests for the Notice, may be made to Lead Counsel:

Hannah G. Ross, Esq.  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019  
(800) 380-8496

[www.blbglaw.com](http://www.blbglaw.com)

Dated: \_\_\_\_\_

By Order of the Court

#550224.6

# **Exhibit B**



**EXHIBIT B**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES LITIGATION,

No. 2:08-md-1919 MJP  
Lead Case No. C08-387 MJP

This Document Relates to: ALL ACTIONS

**JUDGMENT APPROVING CLASS ACTION SETTLEMENT WITH  
INDIVIDUAL OFFICER AND DIRECTOR DEFENDANTS  
AND WITH WASHINGTON MUTUAL, INC.**

WHEREAS, Lead Plaintiff Ontario Teachers' Pension Plan Board ("Lead Plaintiff"), on behalf of itself and the Class; Defendants Kerry K. Killinger, Thomas W. Casey, Stephen J. Rotella, Ronald J. Cathcart, David C. Schneider, John F. Woods, Melissa J. Ballenger, Anne V. Farrell, Stephen E. Frank, Thomas C. Leppert, Charles M. Lillis, Phillip D. Matthews, Regina Montoya, Michael K. Murphy, Margaret Osmer McQuade, Mary E. Pugh, William G. Reed, Jr., Orin C. Smith, James H. Stever and Willis B. Wood, Jr. (collectively, the "Individual Defendants"); and Washington Mutual, Inc. ("WMI" or the "Company" and, together with the Individual Defendants the "Settling Defendants"), entered into the Stipulation and Agreement of Settlement with Individual Officer and Director Defendants and with Washington Mutual, Inc. dated June \_\_, 2011 (the "Stipulation") that provides for a complete dismissal with prejudice of the claims asserted in the above-referenced litigation (the "Action") against the Settling Defendants and the release of the Settled Claims as against the Settling Defendants and other Released Defendant Parties on the terms and conditions set forth in the Stipulation, subject to entry of the Bankruptcy Court Approval Order

JUDGMENT APPROVING CLASS ACTION  
SETTLEMENT WITH INDIVIDUAL OFFICER AND  
DIRECTOR DEFENDANTS AND WITH WASHINGTON  
MUTUAL, INC.

Master No: 2:08-md-1919 MJP

1 by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and  
2 such order becoming Final, and the approval of this Court (the “Settlement”);

3 WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall  
4 have the same meaning as they have in the Stipulation;

5 WHEREAS, in its Order on Class Certification dated October 12, 2010, this Court certified  
6 the Action to proceed as a class action;

7 WHEREAS, in the Preliminary Approval Order, this Court (a) preliminarily approved the  
8 Settlement; (b) ordered that notice of the proposed Settlement be provided to potential Class  
9 Members; (c) provided Class Members with the opportunity either to exclude themselves from the  
10 Class or to object to the proposed Settlement, and (d) scheduled a hearing regarding final approval of  
11 the Settlement;

12 WHEREAS, due and adequate notice has been given to the Class;

13 WHEREAS, the Bankruptcy Court has entered the Bankruptcy Court Approval Order and  
14 such order has become Final;

15 WHEREAS, the Court conducted a hearing on \_\_\_\_\_, 2011 (the “Settlement  
16 Hearing”) to consider, among other things, (i) whether the terms and conditions of the Settlement are  
17 fair, reasonable and adequate and should therefore be approved; and (ii) whether a judgment should  
18 be entered dismissing the Action with prejudice as against the Settling Defendants; and

19 WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and  
20 proceedings held herein in connection with the Settlement, all oral and written comments received  
21 regarding the proposed Settlement, and the record in the Action, and good cause appearing therefor;

22  
JUDGMENT APPROVING CLASS ACTION  
SETTLEMENT WITH INDIVIDUAL OFFICER AND  
DIRECTOR DEFENDANTS AND WITH WASHINGTON  
MUTUAL, INC.

Master No: 2:08-md-1919 MJP

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Settling Parties and each of the Class Members.

2. **Incorporation of Settlement Documents:** This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on \_\_\_\_\_, 2011; and (b) the Notice and the Summary Notice, both of which were filed with the Court on \_\_\_\_\_, 2011.

3. **Notice:** The Court finds that the distribution of the Notice and the publication of the Summary Notice: (i) were implemented in accordance with the Preliminary Approval Order; (ii) constituted the best notice reasonably practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, of the effect of the Settlement (including the releases provided for therein), of Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, of their right to object to the Settlement, the Plan of Allocation and/or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses, of their right to exclude themselves from the Class, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 77z-1(a)(7) and § 78u-4(a)(7)) (the "PSLRA"), and all other applicable law and rules.

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1           4.     **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in  
2 accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally  
3 approves the Settlement set forth in the Stipulation in all respects (including, without limitation, the  
4 amount of the Settlement, the releases provided for therein, including the release of the Settled  
5 Claims as against the Released Defendant Parties, and the dismissal with prejudice of claims against  
6 the Settling Defendants), and finds that the Settlement is, in all respects, fair, reasonable and  
7 adequate, and is in the best interests of Lead Plaintiff and the Class. The Settling Parties are directed  
8 to implement, perform and consummate the Settlement in accordance with the terms and provisions  
9 contained in the Stipulation.

10           5.     The Action and all of the claims against the Settling Defendants by Class Members  
11 and Lead Plaintiff are hereby dismissed on the merits and with prejudice as against the Settling  
12 Defendants, as of the Effective Date. The Settling Parties shall bear their own costs and expenses,  
13 except as otherwise expressly provided in the Stipulation.

14           6.     **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever  
15 binding on the Settling Defendants, Lead Plaintiff and all other Class Members (regardless of  
16 whether or not any individual Class Member submits a Proof of Claim Form or seeks or obtains a  
17 distribution from the Net Settlement Fund), as well as their respective heirs, executors,  
18 administrators, predecessors, successors and assigns.

19           7.     [No persons or entities have submitted valid requests for exclusion.] OR [The persons  
20 listed on Exhibit 1 annexed hereto have submitted valid requests for exclusion from the Class, by  
21 virtue of such requests are deemed not to be members of the Class, and have no rights to participate  
22

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1 in the Settlement or to receive any distributions from the Settlement Fund. Except for those persons  
 2 listed on Exhibit 1, no other persons have submitted valid requests for exclusion from the Class in  
 3 compliance with this Court's orders and the Notice. The persons listed on Exhibit 1 are the only  
 4 persons within the Class who have requested exclusion in compliance with this Court's prior orders  
 5 and the Notice, and, as a consequence, these persons are not bound by the terms of the Stipulation  
 6 and this Judgment.]

7 8. **Releases:** The releases as set forth in Paragraphs 3 and 4 of the Stipulation (the  
 8 “Releases”), together with the definitions contained in Paragraph 1 of the Stipulation relating thereto,  
 9 are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date.  
 10 Accordingly, this Court orders that, as of the Effective Date:

11 (a) (i) Lead Plaintiff and all of the other Class Members, on behalf of themselves,  
 12 their respective heirs, executors, administrators, predecessors, successors, assigns and agents, shall  
 13 be deemed by operation of law to have irrevocably, absolutely and unconditionally, fully, finally and  
 14 forever released, waived, discharged and dismissed, with prejudice, each and every Settled Claim  
 15 against every Released Defendant Party, including, without limitation, the Bankruptcy Claims  
 16 against WMI, and shall forever be enjoined from prosecuting any or all Settled Claims against any  
 17 Released Defendant Party, including, without limitation, the Bankruptcy Claims against WMI; and  
 18 (ii) the Bankruptcy Claims shall be withdrawn with prejudice, in their entirety; and

19 (b) Each of the Settling Defendants, and each of the other Released Defendant  
 20 Parties, on behalf of themselves, their respective heirs, executors, administrators, predecessors,  
 21 successors, assigns and agents, shall be deemed by operation of law to have irrevocably, absolutely  
 22

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1 and unconditionally, fully, finally, and forever released, waived, discharged and dismissed, with  
2 prejudice, each and every of the Released Claims by Defendants as to Plaintiffs against Lead  
3 Plaintiff, Plaintiffs' Counsel and the other Class Members and their respective attorneys, and shall  
4 forever be enjoined from prosecuting any or all of the Released Claims by Defendants as to Plaintiffs  
5 against Lead Plaintiff, each Plaintiffs' Counsel, each of the other Class Members and each of their  
6 respective attorneys.

7       9.     **Bar Order:** Upon the Effective Date, any and all claims for contribution, however  
8 denominated, arising out of or related in any way to the Action (a) by any person or entity against  
9 any Settling Defendant or (b) by any Settling Defendant against any person or entity, other than a  
10 person or entity whose liability to the Class has been extinguished pursuant to the Settlement, are  
11 permanently barred, enjoined and finally discharged to the fullest extent provided 15 U.S.C. § 78u-  
12 4(f)(7) and any other applicable law or regulation (the "Bar Order").

13       10.    **Judgment Reduction:** Any final verdict or judgment that may be obtained by or on  
14 behalf of the Class or a Class Member against any person or entity subject to the Bar Order shall be  
15 reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the  
16 Settling Defendants for common damages; or (b) the amount paid by or on behalf of the Settling  
17 Defendants to the Class or Class Member for common damages.

18       11.    **Rule 11 Findings:** The Court finds and concludes that the Settling Parties and their  
19 respective counsel have complied in all respects with the requirements of Rule 11 of the Federal  
20 Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense  
21 and settlement of the Action. The Court further finds that Lead Plaintiff and Lead Counsel  
22

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adequately represented the Class Members for purposes of entering into and implementing the Settlement.

12. **No Admissions:** This Judgment, the Stipulation, any of their terms and provisions, any of the negotiations, proceedings or agreements connected therewith, any matters arising in connection with settlement negotiations, proceedings, or agreements;

(a) shall not be offered or received against any of the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Released Defendant Parties with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted against any of the Released Defendant Parties in this Action, any other litigation, or in the Chapter 11 Cases with respect to the Bankruptcy Claims or otherwise, or the deficiency of any defense that has been or could have been asserted in the Action, any other litigation, or in the Chapter 11 Cases with respect to the Bankruptcy Claims or otherwise, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendant Parties;

(b) shall not be offered or received against any of the Released Defendant Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the Released Defendant Parties;

(c) shall not be offered or received against the Lead Plaintiff or any other Class Members as evidence of any infirmity in the claims of Lead Plaintiff or the other Class Members;

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(d) shall not be offered or received against any of the Released Defendant Parties, the Lead Plaintiff or any other Class Members, as evidence of a presumption, concession or admission of wrongdoing with respect to any liability, negligence, or fault of any kind, or in any way referred to for any other reason as against any of the Released Defendant Parties, the Lead Plaintiff or any other Class Members in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that, the Settling Defendants, any other Released Defendant Party, Lead Plaintiff and the other Class Members may refer to the Stipulation to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement;

(e) shall not be construed against any of the Released Defendant Parties, Lead Plaintiff or any other Class Members as an admission, concession, or presumption that the consideration to be given thereunder represents the amount which could be or would have been recovered after trial; and

(f) shall not be construed against Lead Plaintiff or any other Class Members as an admission, concession, or presumption that any of their claims are without merit or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Amount.

13. **No Finding Regarding Insurance Proceeds:** Nothing in this Judgment shall constitute a determination as to whether the proceeds of the insurance policies used in connection with this Settlement are or are not the property of WMI's estate.

14. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Settling Parties for

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1 purposes of the administration, interpretation, implementation and enforcement of the Settlement  
2 (except that the Bankruptcy Court shall retain jurisdiction over the interpretation and enforcement of  
3 the Bankruptcy Court Approval Order); (b) the disposition of the Settlement Fund; (c) any motion  
4 for an award of attorneys' fees and/or Litigation Expenses by Lead Counsel in the Action that will be  
5 paid from the Settlement Fund; (d) any motion to approve the Plan of Allocation and the Class  
6 Distribution Order; and (e) the Class Members for all matters relating to the Action.

7 15. Separate orders shall be entered regarding approval of a plan of allocation and the  
8 motion of Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses.  
9 Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay  
10 the Effective Date of the Settlement.

11 16. **Modification of Settlement Agreement:** Without further approval from the Court,  
12 Lead Plaintiff and the Settling Defendants are hereby authorized to agree to and adopt such  
13 amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate this  
14 Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit  
15 the rights of Class Members in connection with the Settlement. Without further order of the Court,  
16 Lead Plaintiff and the Settling Defendants may agree to reasonable extensions of time to carry out  
17 any provisions of the Settlement.

18 17. **Entry of Final Judgment:** There is no just reason to delay the entry of this  
19 Judgment as a final judgment as against the Settling Defendants. Accordingly, the Clerk of the  
20 Court is expressly directed to immediately enter this final judgment as against the Settling  
21 Defendants pursuant to Federal Rule of Civil Procedure 54(b).  
22

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